Florida Law Review

Volume 50 | Issue 4 Article 3

Teaching Dispute Resolution in the First Year of Law School: An Evaluation of the Program at the University of Missouri-Columbia

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TEACHING DISPUTE RESOLUTION IN THE FIRST YEAR OF LAW SCHOOL: AN EVALUATION OF THE PROGRAM AT THE UNIVERSITY OF MISSOURI-COLUMBIA

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INTRODUCTION

The Program to Integrate Dispute Resolution into the Standard First-Year Curriculum at the University of Missouri-Columbia School of Law began in 1985. Supported by grants from the Fund for the Improvement of Post-Secondary Education (FIPSE) of the U.S. Department of Education and from the National Institute for Dispute Resolution (NIDR), the Program was one of the first in the country to infuse dispute resolution instruction into the standard first-year curriculum. FIPSE requires that funded projects include an outside evaluation component. Professor Leonard Riskin, Director of the Project, invited me to serve as evaluator of the project's efforts in the first year. I agreed to the task with pleasure. I had been following the progress of the Alternative Dispute Resolution (ADR) movement outside of law school,[1] and, while I was unaware of Professor Riskin's project, I was interested in seeing what was being done in this area of legal education. I claimed no special expertise in dispute resolution and I am not a law school teacher. My research experience has been primarily in the sociology of legal education and the legal profession, and it was from that orientation that I was prepared to examine this curricular development.[2] I was not prepared to evaluate the program *per se*,

1. *See, e.g.*, Ronald M. Pipkin & Janet Rifkin, *The Social Organization in Alternative Dispute Resolution: Implications for Professionalization of Mediation*, 9 JUST. SYS. J. 204 (1984).

2. Several years earlier I had observed with skepticism the efforts of the legal ethics movement to reform certain essential characteristics in the legal education. *See* Ronald M. Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 1979 AM. B. FOUND. RES. J. 247. The dispute resolution movement was interesting because it appeared to be similarly ambitious.

that is, to determine whether the faculty performance, institutional resources, or constructed teaching materials were appropriate to the task.[3] Rather, I took as my focus the objective of the program, which was to intervene and alter the effects of the dominant influences in legal education that dispose students toward understanding the lawyer's role as primarily adversarial and one of urging clients to litigation. I proposed an impact study that would focus on students' learning, the culture of professional legal education, and the processes of professionalization. Professor Riskin accepted my construction of the task. A few weeks later, I visited the law school shortly before the end of the project's first year. I conducted interviews with several participating teachers and students and conducted a brief survey of a larger group of students using a questionnaire. The data were analyzed and the evaluation report was written during that summer.[4]

Social science, like natural science, requires comparisons to define impact and change. While research using one-shot data collection is common—for reason of limited funding if no other—a caveat was required. I included the following disclaimer in the report:

> Perhaps, what is most significant about the program . . . would be best revealed through comparisons to traditional programs in other law schools. A discussion of the program without such contrasts will miss its major strengths and, by this restricted focus, appear to dwell on its shortcomings. . . . For this reason, . . . I urge the consideration of a . . . review . . . that would encompass these areas.[5]

Three years later, at Professor Riskin's request, I drafted a proposal for a comparative evaluation for inclusion in a grant application he was submitting to FIPSE to request funding to support the development of a teaching video series on dispute resolution. The proposal did obtain funding.

The research design was again an impact study, but unlike the first based on small samples, one-time observations, and qualitative data (i.e., interviews), this one was to be longitudinal, comparative, primarily

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3. An outside evaluation was done at the conclusion of the Program's second year that appropriately assessed these matters. *See* Robert B. McKay & Jack P. Etheridge, Report on the Program to Integrate Dispute Resolution into the Standard First-Year Curriculum at the University of Missouri-Columbia Law School (1987) (unpublished report on file with the Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law).

4. *See* Ronald M. Pipkin, Report on the Program to Integrate Dispute Resolution into the Standard First-Year Curriculum at the University of Missouri-Columbia Law School (1986) (unpublished report on file with the Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law).

5. *Id.* at 2.

quantitative, with a large sample. Data were collected by three surveys using repeated-subjects, self-administered questionnaires distributed to entering first-year students at three law schools. The surveys were conducted during incoming student orientation in the Fall of 1990 at each school. The survey was repeated with the same respondents in the last weeks of the school year in the Spring of 1991, and then again near the end of the student's third semester (second year) in Fall 1991. Thus, there were three observations for each respondent: baseline—prior to attending any law school classes; assessment of immediate curricular effects—at the conclusion of the first year; and a measure of retention—mid-way into the second year. A total of 501 students participated in the study.

Three law schools participated in the study: the primary experimental setting, University of Missouri-Columbia (Missouri); a control setting, Indiana University-Bloomington (Bloomington), where the first-year curriculum was traditional;[6] and, a secondary experimental setting, Willamette University (Willamette), where dispute resolution was taught to all first-year students in a single course during the second semester.[7] The research project involved site visits to participating schools, development of data collection instruments and procedures to have them administered and returned, code books, and numerous computer data runs. The project was concluded in early 1993 and the report was written.[8]

In 1995, as part of a new FIPSE program for dissemination of proven reforms, the Center for the Study of Dispute Resolution at Missouri received a two-year grant to support an effort to engage other law schools in its model of instruction in dispute resolution. Missouri served as mentor to law schools at DePaul University, Hamline University, Inter-American University, Ohio State University, Tulane University, and the University of Washington. Again, the grant had an evaluation requirement. Of the three projects that had been funded, this one was clearly the most complex—involving a large number of faculty and students over widely varying contexts. However, nearly all the funds were required to support

6. That Indiana-Bloomington represented the traditional first-year law school curriculum was accepted upon the statement of its dean, Bryant Garth. The catalog appeared to describe the standard first-year courses as required. No mention was made in the catalog of instruction in alternative dispute resolution in the first year, nor could Dean Garth recall any first-year faculty member ever describing the incorporation of such material in any courses. No additional effort was made to verify this fact.

7. In addition to having a different structure for teaching dispute resolution in the first year—a specific course—Willamette also used different teaching materials and had a different pedagogical approach than Missouri—no simulations. However, subject matter coverage was similar—litigation, negotiation, mediation, voluntary arbitration and court-annexed arbitration.

8. *See* Ronald M. Pipkin, Project on Integrating Dispute Resolution into Standard First-Year Courses: An Evaluation (1993) (unpublished work on file with Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law).

the primary activity. My involvement was limited to attending the annual meetings of the project directors, reading their reports and materials, and talking to representatives from various schools. No data were collected on students except at the initiative of local project directors.[9] Consequently, I chose to use the opportunity largely to present a reflection on the strategy of diffusion of this curricular innovation and the markers of its success. The report was complete in Spring 1998.[10] This symposium issue now offers me the opportunity to draw these discrete evaluations together into a single presentation.

During the twelve years I have observed the Missouri program from a distance, dispute resolution instruction in legal education has developed from a marginal activity to one of growth. A recently published AALS survey of new course offerings in law schools reported that between 1991 and 1997, more than one half of the reporting schools (44) added courses on dispute resolution in the advanced curricula.[11] The authors found this remarkable as the 1991 survey had shown new courses on dispute resolution to be rare.[12] The Missouri program itself, while retaining its original focus on the first-year curriculum, has, during these years, also grown to encompass more faculty and more courses in their advanced curriculum. I am unable to provide an assessment of all the growth, change, and development in the Missouri program, let alone the field of dispute resolution instruction during these twelve years. In this article, I present the data that demonstrated the program's success and I highlight certain elements in orientation, pedagogy, and practice in the Missouri program and in ADR instruction generally, that appear to be problematic. With increasing interest in teaching dispute resolution in other law school settings, I hope these analyses will help curriculum reformers better understand the processes that may affect their efforts.

The article has six sections and a methodological appendix. The first section is a brief overview of the program and the goals of the program that were operative at the time of the evaluations. The second section, taken from the second report, presents the data on the impact of the program by comparisons across time and contexts. The third section, taken from the first report, presents the data on the relationship between students'

9. For example, James Coben, the director of the program at Hamline University School of Law, solicited student feedback. *See* James R. Coben, *Summer Musings on Curricular Innovations to Change the Lawyer's Standard Philosophical Map*, 50 FLA. L. REV. 735, 738-40, 748-49 (1998).

10. *See* Ronald M. Pipkin, The Missouri Dispute Resolution Teaching Project and its Dissemination: Evaluation and Comments (1998) (unpublished work on file with the Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law).

11. *See* Deborah Jones Merritt & Jennifer Cihon, *New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey*, 47 J. LEGAL EDUC. 524, 551-52 (1997).

12. *See id.* at 552.

conceptions of legal practice and their receptiveness to instruction in alternative dispute resolution. The fourth section takes material from the first and third evaluations to illustrate some issues regarding the heavy use of role play pedagogy in this instruction, including unintended consequences. The fifth section is drawn largely from the third report and is a speculation on the strategies of diffusion of the innovation—how to recruit law teachers in traditional substantive law courses to include dispute resolution instruction and the possible consequences of that strategy for the dispute resolution movement. The article then concludes with a modest proposal.

I. THE PROGRAM

Professors Leonard Riskin and James Westbrook describe the background to the development of the law school's initiative into dispute resolution instruction as follows:

> First, because alternative dispute resolution activities are expanding rapidly, it seemed essential that new lawyers understand them and their development in order to meet clients' needs. Second, ... teaching dispute resolution carried with it the potential to remedy such weaknesses in traditional legal education as (1) its domination by the study of doctrine and rule-manipulation, which unduly elevates substance at the expense of process; (2) its predominant focus on a single process—appellate adjudication; (3) its tendency to reinforce the image of the lawyer as hired gun through a narrow, adversarial vision of human relations and the lawyer's role; (4) its failure to instruct students sufficiently in fundamental skills such as interviewing, counseling, and negotiation (thus presenting students with a misleading picture of what lawyers do, allowing them to assume that most disputes are resolved through judicial proceedings or at least pursuant to a rule of law); and (5) its failure to suggest that the lawyer's overriding function is problem solving and that advocacy—inside or outside of litigation—is simply one approach to dealing with a problem.[13]

As an initial part of their project, Riskin and Westbrook developed a textbook on dispute resolution[14] and recruited several members of the first-year faculty at Missouri (and elsewhere) to create simulation exercises for

13. Leonard L. Riskin & James E. Westbrook, *Integrating Dispute Resolution Into Standard First-Year Courses: The Missouri Plan*, 39 J. LEGAL EDUC. 509, 509-10 (1989) (footnotes omitted).

14. LEONARD L. RISKIN & JAMES E. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS (1987).

the accompanying instructor's manual.[15] The exercises were intended to illustrate dispute resolution processes—interviewing and counseling, negotiation, mediation, arbitration, mixed processes—using fact problems targeted to introductory courses on contracts, property, torts, criminal law, and civil procedure. Each instructor of a first-year substantive law course (most first-year courses at Missouri run the full year and were divided into two sections) incorporated one or more discrete dispute resolution assignments into the syllabus. Assignments include readings in the abridged edition of the Riskin and Westbrook textbook, participation in the role-play exercises and ensuing discussions, and viewing and discussing video tape demonstrations of the processes. Sequencing and oversight of dispute resolution instruction was handled by Professor Riskin. Instructors, however, determined where dispute resolution exercises best fit in their syllabi and how results should be reported, discussed and evaluated. Role play and related student participation were not graded and few instructors included dispute resolution questions in course exams.

While the curriculum changes somewhat from semester to semester, a summary as of 1993[16] is as follows:

> Fall semester:
>
> > *Legal Research and Writing:* Overview of ADR and choosing an appropriate process (early September, 1 class period) —readings, videotape demonstrations of mediation and client interviewing, and letter writing assignment;
> >
> > *Torts:* Dispute negotiation (early October, 1½ classes) —readings, two negotiation exercises (one adversarial and one problem-solving on a trespass/mistake dispute);
> >
> > *Contracts:* Transaction negotiation (mid-October, 1 class) —videotape demonstration;
> >
> > *Civil Procedure:* Comparisons of Adjudication and Mediation (early November, 2 classes) —readings, role play exercises on a neighbor dispute using adjudication and win-win mediation models;

15. LEONARD L. RISKIN ET AL., INSTRUCTOR'S MANUAL WITH SIMULATION AND PROBLEM MATERIALS TO ACCOMPANY RISKIN & WESTBROOK DISPUTE RESOLUTION AND LAWYERS (1987).

16. Greater detail is provided in Leonard L. Riskin, 1993 Teacher's Memorandum to Accompany 1993 Supplements to Hardcover and Abridged Paperback Editions of RISKIN & WESTBROOK, DISPUTE RESOLUTION AND LAWYERS 39-47 (1993) (on file with the Center for the Study of Dispute Resolution, Univ. of Mo., Columbia).

Torts: Negotiation (early December, 1-2 classes) —role play exercises involving negotiations of a medical malpractice claim, video tape demonstration of adversarial negotiation with problem-solving aspects, including participation of clients.

Spring semester:

Property: Negotiation and Mediation (mid-January, 1-2 classes) —reading, role play exercise involving a failed lease, and video tape demonstration with similar fact pattern;

Property: Interviewing and Counseling (late February, 1 class) — reading, role play exercise involving client interviewing regarding a real estate development;

Contracts: Arbitration (early April, 1 class) —reading and exercise involving comparisons of arbitration and litigation and the law of arbitration;

Criminal Law: Plea Negotiation (early April, 1 class) —role play exercise concerning a decision to charge in an indecent exposure case;

Civil Procedure: (subject matter coordination with Torts): Client Counseling and Section of a Dispute Resolution Process (late April, 2 classes) —readings, video tape demonstrations, and limited student role play of a defamation/libel action dealing with ADR options.

In addition, an overview of the Program was provided at first-year orientation and, occasionally during the course of the academic year, students were invited to a series of lectures by dispute resolution experts. Total class time, 10½ to 12½ fifty minute periods.

A. *The Willamette Course on Dispute Resolution*

For comparison, the Willamette dispute resolution course[17] had as its

17. The Willamette and Missouri programs came into existence at about the same time. Interestingly, Riskin and Westbrook explain their rejection of the single course model as follows: "Although a separate course in the first year, taught by someone with a special interest, might encourage a reasonably high quality of instruction, it also might keep dispute resolution at the periphery of legal education." Riskin & Westbrook, *supra* note 13, at 510. Willamette may have been the authors' implicit reference.

primary text, *Ending It: Dispute Resolution in America*, by Susan M. Leeson and Bryan M. Johnson.[18] The course was entirely classroom based and used the Socratic method. It did not include role play exercises or video tape demonstrations. However, students were required to attend sessions of a one-day conference on dispute resolution for professionals held annually on campus. While pedagogically different from the Missouri program, general subject matter coverage was similar—litigation, negotiation, mediation, voluntary arbitration, and court-annexed arbitration. Instructional orientations, however, were quite different. Missouri's program emphasized dispute resolution processes as lawyering skills. Willamette's course emphasized dispute resolution processes as an area of emerging law. Total class time for the Willamette course was twenty-six fifty-minute class periods. While this was over twice the amount of in-class coverage of Missouri's program, it does not account for the substantial amount of student time required outside of class for role plays at Missouri.

B. *Goals of the Missouri Program*

An impact or effectiveness study attempts to determine by social scientific methods whether the objectives of the project are successfully implemented and, if so, to estimate the likelihood of repetition in other environments.[19] Consequently, the first tasks are to specify program objectives, determine how they can be assessed within the constraints of time and resources, and develop a set of operational indicators to measure success. On program goals, Professor Riskin provided the following:

> Basic goal of the Program—to prepare students to serve clients and society better.

Dean Bryan M. Johnston, founder of the Willamette course, believed that first-year students would only accept dispute resolution as being as important as subjective law subjects if it were presented in a similar form (i.e. large classes, Socratic method, and traditional exams). That form precluded simulations, role play or skills training. Interview with Dean Bryan M. Johnston, Willamette University College of Law (Jan. 4, 1990). Structural parity also meant that dispute resolution was to be taught as the "law of dispute resolution," not the practice of dispute resolution. *Id.* While my study did not specifically address Riskin and Westbrook's and Dean Johnston's hypotheses, some of my earlier work lends support to their beliefs. *See generally* Pipkin, *supra* note 2.

Since the time of this study, Willamette has continued to require this first-year course in dispute resolution but I understand that experiential simulations have also been incorporated.

18. SUSAN M. LEESON & BRYAN M. JOHNSON, ENDING IT: DISPUTE RESOLUTION IN AMERICA (1988).

19. *See* PETER H. ROSSI & HOWARD E. FREEMAN, EVALUATION: A SYSTEMATIC APPROACH 37-40 (2d ed. 1982).

(1) For students during law school, the program is intended to do the following:

(a) to affect the way students conceptualize the role of lawyers and their own roles as lawyers and to assist them in understanding that the principal role of a lawyer is that of problem-solver, and that advocacy, in or outside litigation, is simply one of an arsenal of approaches a lawyer should possess;

(b) to give students a basic familiarity with alternative dispute resolution processes, their advantages and disadvantages and when they may be appropriate; to give them a sense of how to interview and counsel clients in a client-centered, problem-solving fashion and a more realistic picture of what law practice is like;

(c) to give students an inclination to look for alternative approaches to resolving the disputes described in the cases they read and to pursue more training in alternative dispute resolution in the advanced curriculum;

(d) and to encourage students to feel more freedom to "be themselves," to search for meaning and self-expression in their lives as lawyers, and for those students of a collaborative nature, to provide a means of understanding that there is a place for them in the legal profession.

(2) For students after law school: to affect the following:

(a) students, as lawyers, will be more sensitive to their clients' needs and will help them toward the most appropriate method for resolving or preventing disputes, including alternative dispute resolution methods;

(b) students, as lawyers and judges, will be likely to promote alternative and appropriate dispute resolution methods through their work as members and leaders of bar associations and community and other public organizations;

(c) and through the above developments to improve for society the general quality of service provided to clients and the quality of the dispute resolution and

> prevention services and the public image of lawyers and the degree of client satisfaction with lawyers.
>
> (3) For law faculty at [Missouri]: that all faculty become familiar with the basics of the major alternative methods of resolving disputes and that they will begin identifying dispute resolution issues for discussion in other parts of the standard first-year courses and in advanced courses. In other words, we want a dispute resolution perspective—a focus on how to choose the most appropriate method for resolving or preventing a dispute—to be thoroughly integrated into the curriculum.
>
> (4) For law faculty Elsewhere: that law faculty elsewhere would be helped by our project to teach dispute resolution in first-year courses.[20]

C. *Goal Assessment*

Within the time frame available for evaluation, longer term goals affecting the practice of students-turned-lawyers after law school (2) could not be assessed. The goal of influencing faculty in other law schools (4) became the project of the dissemination grant. Those listed under (1) and (3) could be assessed. However, given that the focus of the study was on students, the goals regarding faculty were not systematically pursued.[21] The comparison schools were not asked for a statement of goals. The evaluation accepts that Bloomington may share the primary goal of preparing students to serve clients and society better, but it expressed none of the specific goals listed under (1) and (3) for its first-year curriculum. The objective of Willamette's course was understood to be the transfer of knowledge and the encouragement of analytical thinking about dispute resolution processes. It did not include specific efforts to alter students' conceptions of lawyering or enhancing their practice skills in any way

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20. Memorandum from Leonard L. Riskin to Ronald Pipkin (Oct. 13, 1989) (on file with author).

21. In the original report, I wrote:

> The test of this secondary program goal [that regarding faculty] was done in unsystematic interviews with faculty. It appears that the program has been successful in attracting UM-C's faculty to its purpose and goals. I am less certain that the specific goal of getting faculty to regularly use examples of alternative dispute resolution in substantive law instruction has been met. However, there is a strong commitment to the program and a sense of its increasing pervasiveness. Time has brought this about and time will likely produce even greater integration.

Pipkin, *supra* note 4, at 31.

other than already embodied in the traditional first-year curriculum.

The following criteria were set as tests of the success of the Missouri program:[22]

> 1) students at Missouri, in comparison to students at Bloomington, should develop and retain a better understanding of dispute resolution alternatives,
>
> 2) students at Missouri, in comparison to students at Bloomington and Willamette, should develop and retain a better understanding of the concept of the lawyer as problem-solver.

The sampling methodology for the cross-time, cross-school evaluation is in the Appendix to this Article.

II. CROSS-TIME, CROSS-SCHOOL EVALUATION RESULTS

A. *Knowledge of Dispute Resolution Processes*

Objective 1: Students at Missouri, in comparison to students at Bloomington, should develop and retain a better understanding of dispute resolution alternatives.

As stated in the evaluation objective, this assessment compared responses of students at Missouri to those from students at Bloomington. Success was defined as a statistically significant difference in the predicted direction—i.e., greater knowledge about dispute resolution alternatives in the experimental setting (Missouri) than in the control setting (Bloomington). The test of understanding dispute resolution alternatives was measured through two separate forms—a self-report of learning and a test of learning.

There was no evaluation objective regarding comparisons of results on the measures between Missouri and Willamette. Neither was claimed to be superior to the other in transfer of knowledge. However, the comparisons may be instructive. As noted, the programs were very different in

22. The original report also included tests of the secondary objectives—whether students with collaborative or non-adversarial natures at Missouri, in comparison with similar students at the other schools, had better morale and whether Missouri faculty expanded coverage of dispute resolution into parts of first-year courses not encompassed in the program and into advanced courses. *See generally* Pipkin, *supra* note 4. Data from the surveys showed no support for the former hypothesis, and unsystematic interviews failed to turn up examples for the later hypothesis. *See id.* My understanding of the current situation from the period of the third evaluation, however, indicates that this goal is being met.

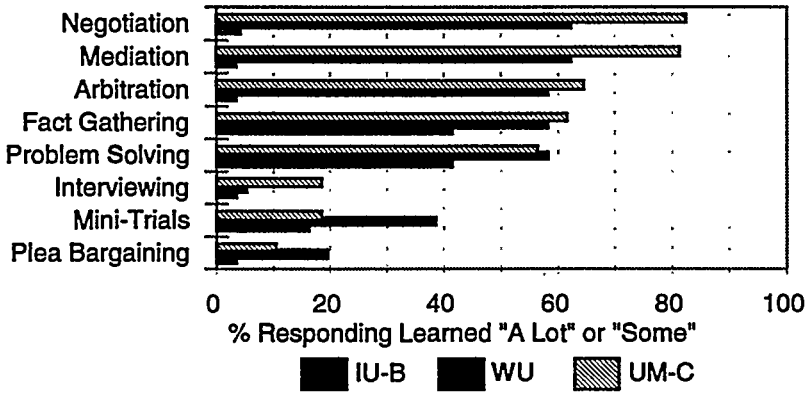
orientation to teaching dispute resolution—lawyering skills versus emerging area of substantive law—and in basic pedagogy—role play and expert demonstrations versus Socratic classroom teaching. Therefore, data from Willamette students were included in the presentation.

B. *Self-Reported Learning*

The report of learning was part of the second survey (at the conclusion of dispute resolution instruction at Missouri and Willamette). Dispute resolution subjects were included in an array twenty-four areas of professional knowledge and skill (e.g., legal research, litigation strategies, argumentation, empathy with clients). Respondents were asked "the degree to which law school has taught me: (1) a lot; (2) some; (3) a little; or (4) nothing about it." The results of that question are displayed in figure 1. Response categories 1 and 2 were combined as self-reports of meaningful levels of learning.

Of those areas of professional knowledge and skills related to dispute resolution, all but one showed school effects to a statistically significant degree. The exception was in the area of "problem-solving." For those terms describing the major processes of dispute resolution practice—negotiation, mediation, and arbitration—students at Bloomington reported almost no knowledge of these subjects. The contrast to Missouri, where most students reported learning about the subjects, is dramatic in the chart. Clearly, by these measures, the founding assumptions of the Missouri program are confirmed and its goal of educating students about dispute resolution was being achieved.

Figure 1 Dispute Resolution Knowledge Acquired in First Year of Law School



Interestingly, Missouri students also reported greater amounts of learning about these processes than did students at Willamette. Interpretations of this finding must be speculative. One hypothesis may be that students credit greater levels of learning when learning involves seeing and doing rather than simply reading and talking. If that is the case here, it supports Missouri's pedagogical choice. A second possibility may be that Willamette's course had more parity with substantive law courses than intended. By emphasizing case law on dispute resolution processes, it encouraged students to interpret their learning as about *law* rather than about the subject of that law—e.g., just as first-year courses in Contract Law generally do not teach contract writing.

For those areas where terms were intended to describe skills relevant to dispute resolution practice—fact gathering, problem-solving, and interviewing—somewhat fewer students reported learning about them. Missouri's students were more likely than students in the other schools to report learning fact-gathering skills, even though this subject was not a primary emphasis in the program[23] and client interview skills—although for the latter subject the portion of respondents reporting learning about it is small in all three schools. As for problem-solving, there was no statistically significant difference among responses from students in the three schools. The term resonated strongly with students at Missouri, but also equally well with students at the other two schools

As practice skills, these three areas are less exclusively associated with alternative dispute resolution than with more general aspects of lawyering. However, the specific meaning students in the three environments may give to the category of "problem-solver" is less clear. The Missouri program specifically emphasizes the term to define an ideal type of legal practice where the lawyer understands the client's underlying interests and assists the client in choosing the appropriate forms for dispute resolution.[24] It is likely that the term is used elsewhere in its ordinary sense as a description of an effective actor. In both circumstances, the term has positive connotations. Therefore, while students in all three settings reported equal levels of learning on the subject, it was possible that they understood the term differently.

The last two areas of knowledge shown in the figure—mini-trials and

23. Students at Missouri may have responded to the term as describing the part of role play exercises where significant facts must be ascertained from the other side for a successful outcome. However, the high levels also reported by Willamette and Bloomington students suggest that many respondents may have keyed on the term as describing the central role given to facts in traditional case law teaching.

24. Problem-solver, so defined, perhaps can be said to be the primary organizing concept for the Missouri program.

plea bargaining—are specialized subareas in dispute resolution. Although students in all three schools reported rather low levels of learning about these subjects,[25] the differences were not statistically significant. The benefits of a text-based orientation may show a payoff here because students at Willamette reported greater levels of learning about these subjects than students at the other schools reported.

To summarize, by comparisons of self-reported learning with the control school, Bloomington, the Missouri program appeared to have met its goal of increasing the understanding of first-year students about dispute resolution processes. While not a criterion in the evaluation, comparisons with Willamette are also favorable to Missouri. With respect to self-reported learning about problem-solving, a substantial portion of Missouri students indicated such learning. But the term did not appear to distinguish Missouri's special emphasis on problem-solving from how it may be understood by students in standard first-year curricula or where dispute resolution is taught solely from a textbook.[26]

C. *Knowledge test:*

A 10 item test was constructed to assess students' technical knowledge of dispute resolution. The test was technical and required a rather detailed understanding of dispute resolution alternatives to get all correct. It was included in surveys in time 2 (first-year effects survey) and time 3 (retention survey). Respondents were told not to guess but respond DK (don't know) if they were uncertain of the correct answer.

The test was as follows: (correct answers noted by *)

1. When parties are in dispute because the law is unclear probably the best way to clarify their positions relative to the law is through:
   1) litigation*
   2) arbitration
2. An award in binding arbitration:
   1) is always judicially reviewed prior to enforcement
   2) is usually a final resolution for a particular dispute*
3. An element of voluntary arbitration which contrasts with litigation is:
   1) the neutral third party is not bound by state law
   2) rules of evidence are relaxed*
4. Decisions cannot be appealed through regular court

25. This finding is somewhat surprising for Missouri students as the Criminal Law simulation was a plea-bargaining role play.

26. More will be discussed about "problem-solving" later in this article. *See infra* text accompanying notes 28-31.

processes from:
1) mini-trials*
2) "rent-a-judge" trials
5. If parties to a dispute want to work out their differences and get back to the status quo, probably the best process to use is:
1) arbitration
2) mediation*
6. Mediation differs from arbitration in that:
1) it is a proceeding not open to the public
2) resolution of disputes requires the agreement of the parties*
7. Arbitration differs from mediation in that the third party neutral:
1) meets alone with each party
2) is usually an expert in the area of the dispute*
8. Competitive strategies in negotiation are more likely than collaborative strategies to result in:
1) a win-win outcome
2) an impasse*
9. A summary jury trial is a process intended to:
1) facilitate out-of-court settlement*
2) focus and shorten time for pre-trial discovery
10. In mandatory mediation:
1) the parties are ordered to resolve their dispute through mediation
2) other settlement options remain open if mediation fails*

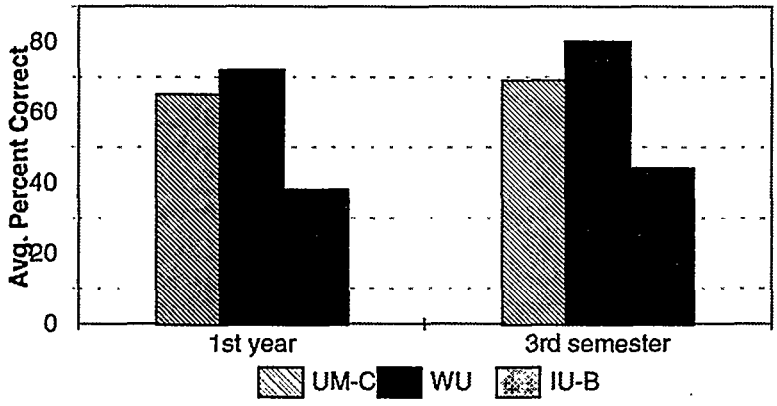
Results are displayed in figure 2. Again, although there is no evaluation objective in comparing Missouri with Willamette, data from Willamette are included in the chart for instructive purposes. The figure shows the average percentage of correct responses from students of each school at the conclusion of first-year instruction and then later at the midpoint of the students' second year. Data were used only from those respondents who completed both tests. Repeated-measures ANOVA (analysis of variance—which controls for within subject variation) was used to test for the and time effects are each statistically significant at the level of <.001.[27]

27. Results of Repeated Measure ANOVA:
Tests of Between-Subjects Effects.
Tests of Significance for T1 using UNIQUE sums of squares

Source of Variation	SS	DF	MS	F	Sig of F
Within Cells	1218.29	225	5.41		
School	1151.52	2	575.76	106.33	.000

The interaction term was not significant. As the chart clearly shows, average levels of performance on the knowledge test differed depending upon the school attended. Regardless of the school attended, however, scores improved in the retest.

Figure 2 Knowledge about Dispute Resolution Processes (10 item test)



At the conclusion of the first year, students at Willamette had the highest scores with an average 75% correct. This is not surprising because, at the time of the survey, they were within days of an examination in their dispute resolution course. Also, in the Missouri program, technical information about dispute resolution processes was secondary to instruction about its practice and such questions were unlikely to appear on substantive law examinations. Still, students at Missouri scored an average 67% correct. At Bloomington, the average for correct responses was 42%. Consequently, this test too confirmed that the Missouri program was meeting its instructional goal.

Results from the time 3 retest showed improvement at all three schools. For Missouri and Willamette, dispute resolution knowledge appeared to have been retained and even enhanced months after the conclusion of the

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Tests involving 'TIME' Within-Subject Effect.
Tests of Significance for T2 using UNIQUE sums of squares

Source of Variation	SS	DF	MS	F	Sig of F
Within Cells	367.52	225	1.63		
Time	38.69	1	38.69	23.69	.000
School by Time	.61	2	.30	.19	.830

programs. Interestingly, the rank order remained the same—Willamette scored an average of 84% correct; Missouri 73% correct; and Bloomington, 48% correct—suggesting that additional learning was built on the original bases. The rate of improvement, although not sufficient to make the school-time interaction statistically significant, was greatest for students at Willamette. There, students improved their scores an average of 9% compared to 6% percent each at Missouri and Bloomington. A speculative interpretation of this finding might be that the course at Willamette, by its emphasis on technical and legal aspects of dispute resolution processes, may have imputed greater value to knowledge in this form. Therefore, over time students may have been more inclined to correct mistakes in their previous knowledge. Still, the improvement in scores at all three schools speaks well for retention, even at Bloomington, where students have not been provided specific instruction.

To summarize, by the test of technical knowledge about dispute resolution processes, the Missouri program appears to have been successful in meeting its goal of increasing the understanding of first-year students about dispute resolution. Further, the program at Missouri did only slightly less well in imparting this information than did the one at Willamette, where such information was more central in dispute resolution instruction. Also, the tests reveal that with some time passing after participating in the program, this knowledge is retained.

Objective 2: Students at Missouri, in comparison to students at Bloomington and Willamette, should develop and retain a better understanding of the concept of the lawyer as problem-solver.

The concept as used in the Missouri program is described as follows:

> The lawyer's principal job is to help the client solve the client's problems. The idea of the lawyer as a problem-solver means that advocacy, inside or outside of litigation, is merely one of the lawyer's tools. The lawyer's mission should be to help the client select the best method for dealing with a problem. Sometimes that is litigation, but a lawyer should not assume offhandedly that litigation is invariably the most appropriate approach.[28]

The image of the lawyer as problem-solver appears to counter two prevailing messages in the standard first-year curriculum: 1) that the primary task of a lawyer is adversarial advocacy; and 2) that a lawyer's first loyalty is to legal rules. It also opens the conceptual space to develop

28. Riskin, *supra* note 16, at 38.

images of lawyers working outside of court, negotiating or mediating disputes to satisfactory resolution.

Measurement difficulties are raised by the fact that the concept, as defined above, counters the adversarial principle by attempting to incorporate the concept into an array of problem-solving options and, thus, making the concept situationally dependent. However, permitting respondents an answer option of "it depends" is unsatisfactory, even though it may be the most appropriate answer in some circumstances. Therefore, the concept had to be "hardened" to exclude adversarial choices. A set of nine items was developed to operationalize the image of the lawyer as problem-solver. Students were asked to force a choice between a problem-solving and adversarial response.

The test of problem-solving versus adversarial images of legal practice was included in all three surveys. An additive scale was constructed with the problem-solving responses coded 1 and adversarial responses coded 0. Therefore scores for each respondent could range from 0 (all adversarial options selected) up to 9 (all problem-solving options selected).

The test items' introduction and items follow (problem-solving options are marked with *):

> Below are pairs of statements dealing with some aspects of the practice of law. You are to pick only the *one* statement in each pair that best represents your view. You may agree, or disagree, with both statements, but in each case *mark one that comes closest to your view*. There are no right or wrong answers!
>
> 1. A lawyer's obligation to society is best met by providing:
>   1) services that satisfy their clients.*
>   2) zealous advocacy for their clients' legal rights.
> 2. In advising a client, a lawyer should be primarily concerned with making sure:
>   1) that the client understands the law.
>   2) he/she understands what the client needs.*
> 3. In negotiations, a better agreement for the client will more likely be reached, if his/her lawyer:
>   1) discloses relevant aspects of the client's situation and needs.*
>   2) emphasizes the client's strengths and keeps secret the weaknesses.
> 4. A lawyer's primary obligation to clients is to:
>   1) help improve their relationships with others.*
>   2) assist in gaining what they are entitled to under law.
> 5. In negotiating, a lawyer should work to get:
>   1) the best possible terms for his/her client.
>   2) an agreement where both sides feel they have won

something.*

6. To assist a client in a dispute, a lawyer should first seek to determine what issues divide the parties then:
   1) find the law that strengthens the client's position.
   2) look for the needs and interests the disputing parties have in common.*
7. A client in a legal dispute will more likely come out better if his/her lawyer:
   1) encourages the client to be involved in resolution decision-making each step of the way.*
   2) makes the important decisions concerning appropriate resolution strategies.
8. In lawyer-client relations, it is far better for both parties if the lawyer is:
   1) emotionally detached from the client and objective about the client's legal interests.
   2) concerned about the client and caring about what is best for him/her.*
9. A case is best resolved, if the lawyer:
   1) wins a significant amount of money for the client in court.
   2) reaches an out-of-court settlement satisfying the needs of both parties.*

Figure 3 displays the average scores on the problem-solving versus adversarial scale from each survey. Only data from respondents completing all three surveys are included. A repeated measures ANOVA revealed the school-time interaction term to be statistically significant.[29] This means that school and time effects are interdependent and neither can be

29. Results of Repeated Measure ANOVA:
Tests of Between-Subjects Effects.
Tests of Significance for T1 using UNIQUE sums of squares

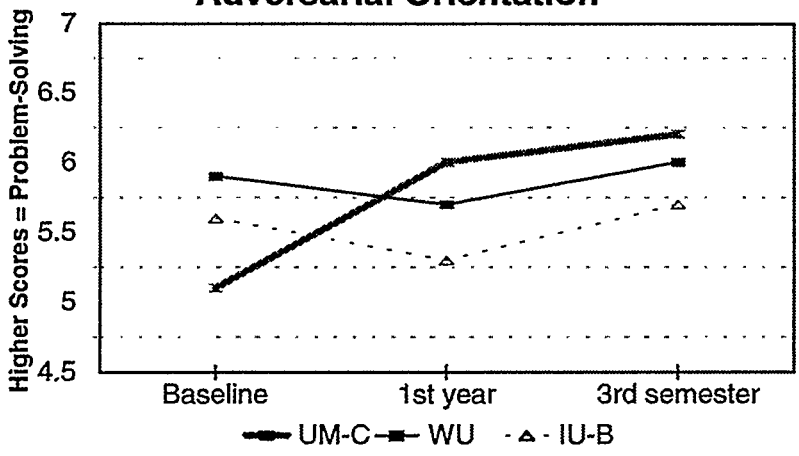
Source of Variation	SS	DF	MS	F	Sig of F
Within Cells	1033.14	221	4.67		
Constant	20983.92	1	20983.92	4488.67	.000
School	15.47	2	7.73	1.65	.194

Tests involving 'TIME' Within-Subject Effect.
Tests of Significance for T2 using UNIQUE sums of squares

Source of Variation	SS	DF	MS	F	Sig of F
Within Cells	1152.81	442	2.61		
Time	25.21	1	12.61	4.83	.008
School by Time	20.50	2	7.62	2.92	.021

discussed separately from the other. The figure makes the interaction clear.

Figure 3 Problem-Solving vs. Adversarial Orientation



Students at Missouri entered law school more inclined toward an adversarial view of lawyering than students at Willamette or Bloomington.[30] At the end of the first year, after completing the dispute resolution program, their scores moved dramatically away from the adversarial and toward the problem-solving end of the scale. Perhaps equally dramatic, and supportive of the view that the standard first-year curriculum presses students toward adversarial issue resolution, scores of students at Willamette and Bloomington moved in the opposite direction. The decline, though, was slightly less at Willamette than at Bloomington. While its dispute resolution course did not develop problem-solving images of lawyers, it may still have offered some insulation from the adversarial effects from the remainder of the curriculum.

At time 3, students Missouri embraced the problem-solving orientation to an even greater degree than they had immediately after the instruction. Again, this suggests retention of learning and the presence of other influences for further enhancement in that environment. At Willamette and Bloomington, remarkably, students turned back toward their incoming views and were slightly more inclined toward problem-solving than they

30. Why this was the case is not clear. Perhaps it is consequence of a litigious legal culture in the state. The *Wall Street Journal* recently labeled Missouri the "Sue Me State." *See* Elliot M. Kaplan, *Missouri, the Sue Me State*, WALL ST. J., Feb. 26, 1997, at A17. According to the article, "Missouri was America's No. 1 plaintiffs' venue in 1995. Of the six largest jury verdicts in the country that year, four came from Missouri." *Id.* The article concluded that "St. Louis and Kansas City are . . . tort heaven for plaintiffs' lawyers." *Id.*

were at law school entry. Apparently, having some distance from the first-year curriculum released students from the pull of adversarial images.[31]

To summarize, using a scale of problem-solving versus adversarial images of lawyering constructed for this study, students at Missouri were more likely than students at Bloomington and Willamette to accept an orientation of lawyers as problem-solvers at the end of the first year and to continue to develop that view into the third semester. Students at Bloomington and Willamette were whip-sawed—coming in somewhat inclined toward problem-solving, then pressed by the first-year curriculum toward more adversarial views of lawyers, then moving back toward problem-solving again in the third semester. Thus, Missouri appears to have been meeting its goal of instilling the concept of the lawyer as a problem-solver in its first-year students. Data from time 3 suggests that the problem-solving orientation continued to be reinforced for students after they had passed through the program and into the second year. Students at the other two schools appeared to respond to inconsistent messages about orientations toward legal practice in the first and second-year curricula.

D. *Conclusions from the Cross-Time, Cross-Context Evaluation*

The quantitative impact study supports the conclusion that the Missouri program is a success. Students at Missouri were much more knowledgeable of dispute resolution processes than students at the Bloomington, where a standard first-year curriculum was in place. Students at Missouri accepted the concept of the lawyer as problem-solver (as defined in the constructed scale) to a greater degree than students at Bloomington and Willamette. However, in the self-reported learning, the respondents in the two schools with no exposure to Missouri's view of the ideal lawyer easily accepted the term of problem-solving as applying to their learning. Most likely they meant something else by it. Problem-solving is a term in common parlance and is not uniquely associated with any particular professional endeavor. In my opinion, if the Missouri program is to be known for producing lawyers with visions of practice expanded beyond adversarial advocacy, a new term for that kind of lawyer would be helpful. However, I will discuss this term and its utility again later in the article.

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31. There could be a number of explanations for this change. The second year law school curriculum may expand students' images of lawyers. It is largely elective and contains many courses in which lawyers are imagined as policy-makers or legal advisors outside of court. At Missouri or Willamette some students could have taken dispute resolution courses as second-year electives. Alternatively, it might come from the influence of work experience in law settings during the summer months or from increased association with other upper class students who have had these experiences.

III. STUDENT RECEPTIVENESS TO THE DISPUTE RESOLUTION CURRICULUM

A. *Methodology*

The cross-time, cross-setting study addressed the question of whether the Missouri program was effective by comparing contextual differences in average responses. Now we turn to the narrower question of whether, within the same context, the program was more effective with certain students than with others. Quantitative data on this question were collected for the first report. A questionnaire was administered to a group of volunteer students from both first-year sections who had just completed the program's curriculum (N = 106). The survey included a set of attitudinal items, relevant to the alternative dispute resolution instruction and students' expectations for using this information. Also, the survey included a brief semantic differential[32] test intended to provide a measure of students' self-images as lawyers.

The survey was administered to the first class of students to be taught using the Missouri curriculum. There is some overlap between findings from that study and those of the second survey done several years later and reported above because some questions were repeated. Where that occurs, the results were confirming. However, given the timing of the first survey, it should not be taken to be an accurate reading of contemporary student orientations to the program. A substantial amount of time has passed and the program and faculty have experienced some change. The purpose, however, is not to present the data for a current assessment but to examine the relationship between students' orientations toward practice and their judgments about the program and the dispute resolution curriculum. Such attitudinal relationships are likely to be enduring.

B. *Attitude Items*

The attitude questions allowed response options 1 to 5, with 5 labeled "strongly agree," and 1, "strongly disagree." The list is presented below and is ranked by mean responses. The higher the mean, the greater the agreement with the statement. Of course, this was not the sequence in the questionnaire.

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32. Semantic differential is a technique to develop a set of characteristics from a series of scales marked by appositional terms. *See* Charles E. Osgood, *The Nature and Measurement of Meaning, in* SEMANTIC DIFFERENTIAL TECHNIQUE: A SOURCEBOOK 3, 26-36 (James G. Snider & Charles E. Osgood eds., 1969). In this case, respondents were asked to characterize certain traits or qualities they expected to have as lawyers.

1. My idea of what a lawyer is primarily expected to do for his or her client is to help them solve their problems (mean = 4.52, SD = .69).
2. My idea of what a lawyer is primarily expected to do for his or her client is to help them get what they are entitled to under law (mean = 3.84, SD = .917).
3. I believe that my courses have given me a very good idea of the distinctions between negotiation, mediation, arbitration, and litigation (mean = 3.68, SD = .98).
4. Because of the experiences I have had in my classes, I have come to realize that I would need a great deal more training in negotiation before I would be able to use it effectively in legal practice (mean = 3.40, SD = 1.11).
5. I think that on the whole the exercises were a very valuable component in each course (mean = 3.40, SD = 1.05).
6. I have a very good sense of when negotiation or mediation is and is not appropriate for the kinds of problems clients might bring me (mean = 3.12, SD = .88).
7. Most students did not seem to take the exercises very seriously because they thought they would be unlikely to have an impact on their course grades (mean = 3.07, SD = 1.40).
8. I think being a good negotiator or mediator is probably more a matter of having the right personality for the task than it is having been well trained in the techniques (mean 3.00, SD = 1.12).
9. By and large, I think the negotiation, mediation and arbitration exercises were well integrated into each course (mean = 2.99, SD = 1.18).
10. It is clear to me that mediation is really most appropriate for trivial legal problems and for clients who do not have the resources for litigation (mean = 2.44, SD = 1.32).
11. My conceptions of what I am going to be doing in legal practice is that I am going to be a "hired gun," advocating my clients' interests as they define them (mean = 2.43, SD = 1.13).
12. When I am presented with a description of a dispute or I first read a case, my immediate thought usually is, could this have been mediated or negotiated and litigation avoided? (mean = 2.42, SD = 1.20).
13. I do not think it is very likely that I will often have occasion to use negotiation or mediation techniques in law practice (mean = 1.71, SD = .94).

Responses to items dealing with the quality of instruction in dispute resolution (3, 5, 6, and 9) indicate that, on average, students expressed levels of understanding of dispute resolution as moderate to uncertain (3 and 6) and were uncertain to slightly dissatisfied with the program

instruction (5 and 9). Variance, as measured by standard deviations in responses, was somewhat larger for items dealing with teaching satisfaction than for questions on understanding.

Items intended to tap the integration of dispute resolution instruction into individual conceptions of professional practice suggested some curricular success. On average, students disagreed with item 13, which showed that they did understand the subject to be professionally and personally useful; they also moderately disagreed with item 10, indicating that they tended not think of mediation as primarily a technique to be used for trivial legal problems or clients without resources for litigation, but with a wider variance.[33]

With regard to lawyer role conceptions, average responses implied that students identified very strongly with program's salient label of problem-solver (1) and only slightly less strongly with the idea that their primary role obligation was to be an enforcer of legal claims (2).[34] However, the extreme adversarial image of "hired gun" (11) proved to be offensive to the majority of students.[35]

Responses to the item that probed how deeply dispute resolution thinking had penetrated analytical styles (12) showed that, for most students, the approach had not become reflexive. ADR was not a first thought about conflict resolution, although the variance was moderately wide on the item. Finally, respondents disagreed widely on whether they now possessed sufficient skills to use negotiation effectively (4), on

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33. As will be reported later in the article, these issues came to the front in the student interviews with interesting elaboration. *See infra* text accompanying notes 52-62.

34. A contrast was intended between items 1 and 2 to attempt to get at student's understanding of the point in the literature that alternative dispute resolution often involves a resolution based on client interests rather than legal rights. Some students apparently perceived this contrast and accepted its implications for their role conceptions. Most, however, accepted both the problem-solver conception and the notion that lawyers are first committed to enforcement of legal rights. Perhaps they understood problem-solving to mean the appropriate application of legal rules to a client's problems. Thus, for them the label of problem-solver has no particular alternative dispute resolution reference.

In the second survey, these items were presented as a forced choice. As reported earlier, Missouri students, were more likely to opt for assisting clients based on interests rather than just pursuing legal rights. This difference might be a result of changes in the program, reinforcing a distinction, or it might be an artifact of the survey instruments. Regardless of the reason, the findings continue to suggest that the use of the term problem-solver to define the role objective is problematical.

35. Further analysis of this item proved that this inference needed refinement. While as expected this role conception was rejected by those who labeled themselves cooperative, it was also rejected by some who labeled themselves competitive and adversarial. The explanation was a matter of gender. All women, regardless of whether they saw themselves as cooperative or adversarial overwhelmingly rejected the image of "hired gun," while competitive men did not (this was the only item that correlated with gender). The metaphor appears to be seen as more masculine than adversarial.

whether such skills were in fact secondary to personality characteristics (8), and on the idea that fellow students did not take ADR exercises seriously (item 7).

A number of items (not shown) were included in the survey to attempt to find structural or attribute correlatives of the attitude items. Older individuals and women are sometimes said to be more attracted to alternative dispute resolution because of its less combative style. However, no statistically significant relationships were found between responses on the attitudinal items and age and gender.[36] Working from the hypothesis that attitudes about ADR might be influenced by certain teachers or groups of teachers or general satisfaction with legal education or might be associated with certain kinds of law practice, questions were asked on the respondent's section, course subject matter favorites, current level of satisfaction with law school, and career setting aspirations. None proved to be significantly related to the attitudes expressed in items 1 through 13.

The absence of any statistically significant relationship among attitudes about alternative dispute resolution, the first-year program, and the attribute, curriculum, and career variables indicates that the variance in responses to questions on ADR and the curriculum appears to have no structural basis.[37] Consequently, the explanations for differing student responses to program and dispute resolution instruction may result from differences in student's values, attitudes, and personalities. The semantic differential test was constructed to address this possibility.[38]

Students were asked to apply a series of contrasting terms in a semantic differential test to the images of themselves as the lawyers they ultimately expected to be. Factor analysis (a statistical test of the hypothesis that individual item responses are aspects of complex underlying variables) resulted in the best fitting model with three dimensions. These are displayed in table 1. Each dimension was related on a 5 point scale, with

36. There was the exception of the interaction effect reported in the preceding note. *See supra* note 35. I am not entirely certain, however, that these findings necessarily repudiated the hypothesis. Interviews, reported later in this article, suggested that not all students experienced the dispute resolution exercises as non-combative. *See infra* text accompanying notes 59-62. Several students reported that the negotiation exercises, in particular, were very competitive and intimidating. *See infra* text accompanying notes 59-62.

37. Thus, hypothetically, if a law school wanted to influence the degree of receptiveness to ADR instruction in an entering class by being attentive to certain variables upon which information is available (sex, age, possibly career aspirations) these findings suggest that such a screening would not be worthwhile.

38. Here, of course, are limitations that are part of quick, low-budget research. Ideally a semantic differential would be pre-tested and refined to terms of high salience. That was not possible. Also, if personality was to be used seriously as a variable, psychological instruments are available and could be used. But such elaborate and complex instruments were inappropriate for a simple formative evaluation.

Table 1: Three Factor Solution to Items in Semantic Differential (N =98)

	FACTOR 1	FACTOR 2	FACTOR 3
Formal/Informal (3.3)			-.64
Cooperative/Competitive (2.5)	.57	.38	
Trusting/Untrusting (2.6)	.44		-.34
Adversarial/Problem-solver (3.7)	-.67		
Complex/Simple (2.9)		-.58	
Trickster/Helper (4.2)	-.60		
Cool/Hot (2.5)	.50		
Therapeutic/Non-therapeutic (2.3)	.70		
Not powerful/Powerful (3.6)		.74	
Rich/Not Rich (2.6)		-.48	-.43
Loner/Social (3.5)			.69
Empathetic/Non-empathetic (2.1)	.64		.41
Fast/Slow (2.5)		-.66	
Career-oriented/ Not Career-oriented (2.4)		-.34	-.55
Intuitive/Analytical (3.0)		.53	
Soft/Hard (3.1)		.65	
Blunt/Subtle (2.9)			-.32

the left pole represented by 1 and the right by 5. In the table, the number in parentheses next to each pairing is the item's mean score. The factor loading values can be understood as correlations between an individual item and its underlying factor. The higher the loading value, the better that item for interpreting the factor. In this case, positive loadings signify identification with the right semantic pole and negative numbers show identification with the left semantic pole. Non-significant loadings are not shown here and items that did not load significantly on any factor were deleted. Incomplete responses were also deleted, resulting in N = 98.

Factor 1 is a dimension that appears to be very salient to the dispute resolution curriculum. The item loadings describe an elaboration of the traditional "fighting advocate" image of lawyers—competitive, adversarial, distrusting of others, non-empathetic, non-therapeutic, tricky, and

hot—versus the opposite image of the lawyer as a cooperative problem-solver, who is trustful, empathetic, therapeutic, helpful, and cool. Factor 2 appears to be a specification of elements in the traditional success images of lawyers: competitive, rich, powerful, career-oriented, fast, complex, hard, and analytical versus the opposite of those characteristics—cooperative, not rich, not powerful, not career-oriented, slow, simple, soft and intuitive.[39] Factor 3 is a bit more difficult to interpret, but it appears to represent a form of elite sociability: formal but trusting, non-empathetic and blunt but still social, wealthy, and career-oriented. This dimension, while strong enough to be statistically significant, seems to be residual and idiosyncratic. As it does not appear to have any salience for the dispute resolution curriculum nor particular value to this analysis,[40] it was disregarded.

To determine whether the "adversarial problem-solver" and "traditional success goals" dimensions of self-images might-have some influence on how students perceived ADR and its instruction, factor scores[41] were computed and correlated with attitudinal items 1 through 13. The pairings with statistically significant correlations[42] are shown in table 2. Negative correlations mean that respondents more associated with characteristics of adversarialism in the case of factor 1 and traditional success goals in the case of factor 2 were likely to agree with the statement and those at the opposite end of this scale—those who are problem-solvers in orientation or reject traditional success goals—were likely to disagree with the statement. Positive correlations represent the reverse preference.

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39. While the factors are compelled by the extraction method to be statistically independent, the joint loadings show there is overlap between the adversarial and success images. The "fighting advocate" may be presumed to result in professional and material success. However, the reverse—success requiring adversarial styles—may not necessarily be seen as true.

40. The only interesting correlation between this factor and the attitudinal items was with number 7. Those who scored high on the factor tended to reject the idea that fellow students did not take the dispute resolution exercises very seriously.

41. Each respondent is assigned a unique number for each factor based on his/her responses to the items in a factor and their factor weighting. The scores are standardized on the average, thereby providing a relative ranking according to the degree to which each person is characterized by each factor.

42. Statistical significance was reached at the $<.05$ level of probability with correlations greater than or equal to .18. Although statistically significant, most of the correlations are not particularly high. This is a consequence of the substantial disparity in scales. The factor scores ranged on an interval scale carried to five decimal places from about -3 to +3, whereas the attitudinal scales only had five intervals. Therefore, lower correlation values could be expected and when they are statistically significant can be assumed to be meaningful.

Table 2: Corrections Between Factor Scores and Attitudinal Items Concerning the Program and Dispute Resolution Instruction (N=98)

Items	*Adversarialism Factor*	*Trad. Succ. Goals Factor*
1) My idea of what a lawyer is primarily expected to do for his or her client is to help them solve their problems.	.18	ns
2) My idea of what a lawyer is primarily expected to do for his or her client is to help them get what they are entitled to under law.	ns	-.26
3) I believe that my courses have given me a very good idea of the distinctions between negotiation, mediation, arbitration, and litigation.	ns	-.21
4) Because of the experiences I have had in my classes, I have come to realize that I would need a great deal more training in negotiation before I would be able to use it effectively in legal practice.	ns	.18
5) I think that on the whole, the exercises were a very valuable component in each course.	.23	ns
6) My conceptions of what I am going to be doing in legal practice is that I am going to be a "hired gun," advocating my clients' interests as they define them.	-.20	-.39
7) When I am presented with a description of a dispute or I first read a case, my immediate thought usually is, 'could this have been mediated or negotiated and litigation avoided?'	.24	.29

The correlations of attitudinal items with lawyer self-image scales show the following: students with higher scores on the factor of adversarial self-images were less likely to think first of settlement by mediation or negotiation when presented with a description of a dispute (7) or to think that a lawyer's primary responsibility is to help people solve their problems (1); they were more likely to accept the notion that they were to be "hired guns," (6) and they did not think that the dispute resolution exercises had been a valuable component in the curriculum (5). Conversely, those with problem-solving self-images *did* first think about alternatives to litigation when presented with a dispute or new case, *did* see the lawyer's primary responsibility as helping clients solve their problems, *did* reject the idea of lawyers as "hired guns," and *did* think the dispute resolution curriculum

was valuable. To the extent that these items represent important aspects of learning about ADR, those with the highest levels of adversarial self-images as lawyers appear to have been unreceptive, perhaps even hostile, to that instruction. And, to the contrary, students rejecting adversarial self-images were more open to ADR and instruction concerning it.

Students with higher scores on the "traditional success goals" factor were more likely than those who rejected those goals to believe that they understood the differences among various forms of ADR (3) and that they could handle negotiation effectively without further training (4). They did not, however, think of ADR as a first option when confronted with a description of a dispute (7); they believed a lawyer's primary obligation was to assist clients in pursuing their legal claims (2); and to advocate their client's interests as the client defined them (6). Some effects of the success factor on attitudes about legal practice appear to be similar to those of adversarial attitudes, but they differed in that students with strong self-images of achieving traditional success did not appear to be hostile to ADR instruction. Perhaps they considered ADR important in that their idea of how to achieve success is to serve clients' desires, which could include alternative dispute resolution. However, at the same time, they appeared to trivialize ADR by judging that it was easily understood and done. For those rejecting traditional success goals, alternative dispute resolution was a first step in dealing with conflict, but dispute resolution options and skills were seen as too complex to be simply learned. Also, interestingly, as lawyers, they did not see advocating a client's entitlements under law or client's self-defined interests as a high priority. Presumably, they desired to work toward resolving disputes on a basis that rested on principles other than abstract rules and self-centered interests. Although the questions did not present them with the opportunity to describe that basis, we might infer that these students accepted the dispute resolution curriculum's emphasis on identifying underlying client interests and problem-solving through cooperative means.

Which students, then, seem to have been the most open to the ADR instruction? What were their professional self-images? The data suggest that they were the students who saw themselves as lawyers who would be cooperative, trusting, simple, slow, cool, soft, intuitive, problem-solvers, helpers, empathetic, therapeutically oriented, and not powerful or rich.[43] They apparently expected their own professional prospects to fall somewhat short of, or even to be in opposition to, the traditional success images of the lawyer—as fighting advocate or as prosperous elite. This may be realism or simply the timidity of novices, however, it strongly

43. One might be tempted to associate this list of traits with one gender. However, as reported earlier, gender was not correlated with any of these items or scales. *See supra* notes 35-36 and accompanying text.

counters the conventional myths and heroic images of the lawyers that permeate legal education and the legal profession.[44]

IV. DISPUTE RESOLUTION INSTRUCTION THROUGH ROLE PLAY SIMULATIONS

The cross-time, cross-context evaluation allowed us to provide an objective test of the degree to which the Missouri program was meeting its goals. As the data made clear, the program is a success. The first survey answered the question of which students were more receptive to the dispute resolution curricula—the answer being those who were less drawn to adversarial and traditional success images of lawyers. In this section, I wish to examine more closely the curricular reliance on role play pedagogy as the primary mechanism to alter traditional law student socialization.

As with the preceding section, the discussion must begin with a caveat. What is presented here was drawn from interviews primarily done for the first evaluation. This was early in the history of the Missouri program. Circumstances have changed and adjustments may have been made with time. However, I am not attempting here to build a critique or to detract from the demonstrated success of the program. Rather, I wish to draw from the Missouri experience some understanding of the micro-mechanisms of curriculum change and resistance to change, the strategies of coping with change, and the filters in law student and teacher cultures through which new ideas must pass. This focus may illuminate those areas that either facilitate or impede curricular innovation in legal education and, in particular, the adoption of this dispute resolution curriculum in other settings.

A. *Role Play*

As part of the first evaluation,[45] I conducted individual interviews with each of the instructors in the program and hosted two group discussions with students from each of the two first-year sections. The students were volunteers and, obviously, were neither randomly selected nor necessarily representative of their respective classes. But as a group, they were remarkably diverse in their attitudes about alternative dispute

44. One caution must be taken about drawing conclusions from these data. I have assumed that the professional self-images reported here were unchanged from those that students brought with them at the beginning of the year. As the questionnaire was administered after students had been exposed to the ADR instruction, it is possible that the causation is reversed—that is, students who were most drawn to ADR saw the counter-mythic descriptions as the best implementations of their interests in ADR. Regardless of the direction of causation, however, the point concerning the counter-heroic images of ADR remains.

45. The kinds of data collected and methods used are described in the appendix to this article.

resolution—spanning the continuum of favorable to unfavorable with some neutral in between. As they compared experiences and probed each other's understandings of what they were being taught, I found they offered important insights into the way the dispute resolution curriculum was interacting with student culture.

The Missouri program relies heavily on role play instruction to carry its message.[46] In this, the program has adopted the prevailing approach to introducing alternative dispute resolution both inside and outside[47] legal education. For faculty and students, this is the most distinctive feature of the instruction and what clearly sets it apart from the traditional forms of classroom teaching and learning. Group role play instruction also impacts the routines in regular roles. Students and teachers understood the exercises to be something "extra," requiring special allocation, perhaps even sacrifice, of time. The first role plays were particularly stimulating.[48] There was a social side to the exercises and the facilitation of unconstrained interaction among classmates was welcome ("got to know some people better outside of class"). The break in classroom routine and the less abstract treatment of legal issues was also appreciated.

As the year progressed, participation in the exercises, most of which were performed outside of class and out of the instructor's sight, fell increasingly under the dominating influence of that aspect of the culture in nearly all educational settings which assigns priorities to time and activities according their contribution to one's course grade.[49] Some instructors, apparently in recognition of those prioritizing norms, were intentionally ambiguous about whether the exercises and ADR in general would be a subject for examination. Students quickly determined that this would not be the case.[50] A negotiated order emerged for minimizing the time

46. The Riskin and Westbrook text is of course an important component in the project. *See supra* note 14 and accompanying text. However, students were apparently given assignments in the text primarily as supplements to exercises.

47. The significance of the ADR movement outside legal education is discussed later in the article. *See infra* text accompanying notes 68-77.

48. This is, I think, a common reaction to first experiences with simulations. The opportunity in "game playing" to step outside one's ordinary roles without risk appears to excite naturally, especially when the context is social and supportive. Over time and repeated occasions, however, game playing becomes routinized and less provocative (except perhaps for an inveterate few).

49. Typically teachers lament students' preoccupation with grades and many argue that it is a distortion of the learning experience created by students. In fact, of course, students are merely being responsive to pressures maintained by significant others, including teachers, and the institution.

50. Or, if dispute resolution was to be a topic on exams it would likely be based on reading assignments which could be reviewed later. This estimation was also confirmed by the faculty. Typically, the faculty felt—and directly or indirectly communicated to students—that the simulated play could not in itself be graded, or that it was pedagogically (and perhaps ethically) inappropriate to grade student's performances in experiential situations.

allocated to the exercise. With little grade payoff attached to effort, time for the exercises came to be allotted by tacit group consensus on the appropriate limits. When the limits were approached, special pleading for intervening academic contingencies was accepted. These could even dictate the speed of play in an exercise. It was reported that a legitimate device to accelerate a slow-moving negotiation assignment was to appeal to the general need to be engaged in graded course work—invoking the greater priority given to immediately reinforced norms over the more remote professional norms supported by the exercises. By the latter part of the school year, after the novelty of role play exercises was worn, assignments were readily assessed, often by unspoken agreement, as to "how much time they were worth." Of greater pedagogical consequence at this point, however, was that reaching an impasse in negotiations became approved as an acceptable alternative to exceeding the implicitly allotted time.[51]

Instructional role play exercises, typically, follow the same pattern. They begin by providing participants a general script of facts, then ask them to play assigned roles intuitively. The operative assumption is that participants will, out of necessity, adopt role stereotypes. Play is structured so that as students act out roles they find that the script places them in stress and they need to alter their role conception in order to make an acceptable outcome possible. After the play, perhaps in a debriefing or in a moment of reflection, students are expected to juxtapose their incoming role conceptions with the demands and consequences programmed in the simulation and compare the results. Given that success usually requires some modification (or even repudiation) of the stereotyped role, presumably learners realize the benefits of altering their incoming orientations.

The pedagogical theory underpinning role play is essentially that of learning through trial and error. The method can work as planned, however, only under certain conditions: participants assume the roles as anticipated; the roles are convincing and well played; external priorities, such as those noted above, do not limit the interaction; and, most importantly, under variable conditions and permutations of play, the stimuli in the exercises produce the effects desired. Each condition can be problematic and can greatly affect the quality of the teaching and learning. In listening to students discuss particular exercises with each other, it was clear that what may have worked for one person did not necessarily work for another. Not only were experiences different but interpretations of the same events varied widely as well. The students' discussion easily

51. To simulate the possibility of realistic outcomes, negotiation exercises routinely allowed impasse as an option.

devolved from topics of shared learning into examples of novelty and variance in their experience. They attributed their particular stories—probably correctly—to certain idiosyncracies in the play of their subset, peculiar combinations of personalities, and misunderstandings of instructions. The classroom debriefings revealed their errors, but did not substitute for a well-played simulation.

B. *Images of Legal Practice, Alternative Dispute Resolution, and Role Play*

I pursued several lines of inquiry intended to get at the students' understanding of the concept of ADR and its justifications. Their understanding of the need for alternative dispute resolution was uniformly narrow, certainly in comparison to those views offered in the reading that had been assigned. Quite clearly, they believed that alternative dispute resolution was primarily a concept tied to the cost of litigation and the need for such options was strictly pragmatic. "ADR" and "settlement" were used as interchangeable terms, with the choice between litigation and settlement stated, usually with an embarrassed laugh, as "how much justice the client can afford." In apparent contradiction, however, students were quick to attach the program's salient label of "problem-solver" to themselves and to observe that not all disputes necessarily lent themselves to court-based solutions. Still, in discussion of potential cases for ADR, most agreed that the first question was whether the client could bear the cost of litigation. They did not start with a relational notion of why to invoke ADR, nor did they ask if a desirable outcome for both parties could be produced without litigation.[52] These attitudes appear to have been bolstered by the prominence of client-centered negotiation as their primary ADR experience. Students had not been taken very far from adversarial modes of conflict resolution—a point to be discussed at greater length later in the article.[53]

There is, of course, strong support from prominent elements in the legal profession for this cost-of-litigation justification of alternative dispute resolution.[54] This attitude appears to have been the perspective presented (or at least reinforced) by many teachers as well, as almost none of the respondents indicated that they seriously considered other justifications for

52. Some of the discussion about this point took what I thought to be a strange but interesting turn. Students were not inattentive to the possibility that the best form of dispute resolution might require a non-monetary disposition. However, they got hung up on the idea that their prospective employing law firms might object to non-monetary settlements as they make it difficult to levy an appropriate fee for service.

53. *See infra* text accompanying notes 70-83.

54. *See generally* Barbara McAdoo & Nancy Welsh, *Does ADR Really Have a Place on the Lawyer's Philosophical Map?*, 18 HAMLINE J. PUB. L. & POL'Y 376 (1997).

ADR.[55] I have no argument as to whether this is the correct perspective for explaining the need for and use of ADR, but the pedagogical consequence of this view, I believe, can be problematic when attempting to teach ADR pervasively.[56] It makes the instruction on dispute resolution largely unprincipled,[57] and tends to confine the situations which call for alternative forms of resolution to a narrow base. In legal practice it may be common that clients lack sufficient economic resources necessary for complex litigation or that certain "non-legal" solutions are most appropriate for their problems. However, this is not usually factually significant for classroom hypotheticals or casebook examples in substantive law. Therefore, for teachers to incorporate the ADR operative facts (limited resources of clients, non-rights based claims, or bases for cooperative settlements) into routine classroom discussions of legal doctrine is likely to be a distraction from the primary cognitive and analytical tasks at hand. Consequently, "acceptable" premises for ADR resolutions under the cost-of-litigation approach are unlikely to emerge in the ordinary course of instruction,[58] and the effect of confining the relevance of alternative dispute resolution to so narrow a circumstance is to reinforce the sense of its marginal role in professional practice.

The role conception which was promoted through the dispute resolution

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55. Of course, the cost-of-litigation justification is also the view that is least challenging to law and the legal profession. It does not imply that resolution through litigation is wrong, only expensive. Instructors might be reluctant to press some of arguments in the ADR readings that appear to be anti-law or overly non-cognitive as these raise issues that are perhaps difficult to handle in first-year courses (or at any other time for that matter).

Also, again, it is important to note that these observations were made early in the program. Circumstances at Missouri have most likely changed. However, the issue is raised here as a caution to new efforts to replicate their program.

56. By pervasive teaching, I do not mean simply having a unit on the subject in each course, but rather invoking the subject in every relevant context. One goal of the Missouri program is that teachers will reference non-litigation opportunities whenever possible to project the image of the lawyer as a "problem-solver" who is prepared to guide clients through all available options.

57. An exception, perhaps, is a principle regarding serving clients who cannot afford full legal services. This idea was also brought up in a discussion between two students as a pragmatic (rather than ethical) concern. One, stating his view that perhaps his employing law firm would not appreciate the suggestion to a client to use ADR even as a cost control measure because it might jeopardize the size of the fee. The response from an advocate of ADR in the group was that the firm should appreciate the possibility that clients so treated might, in gratitude, be the source of further business. Clearly, both students still accepted the idea that ADR might jeopardize a lucrative law practice.

58. This analysis is also supported by the fact that students were unable to recall more than a couple of classroom situations, outside those connected to ADR simulations, where instructors invoked the possibility of alternative dispute resolutions for the cases or hypotheticals at hand. The exceptions were noted as part of criticisms of judicial opinions where the instructor indicated that "this case should not have come to court. It should have been settled." Clearly communicated was the idea that ADR was for legally trivial matters.

exercises (and is consistent with that conception embedded in the analytical reasoning portions of the courses, as well as in the culture of the legal profession generally) is that of lawyers acting on behalf of clients as free and autonomous professionals, guided by reason, ethical obligation, clients' best interests, and legal rules. Interestingly, a number of students challenged this notion. Their sense of reality of legal practice was that a lawyer's actions are severely restrained by the organizations of practice—law firms.[59] They spoke very speculatively and intuitively about these settings, but apparently could not conceive of themselves as autonomous actors in them. Instead, they anticipated that they must concede to the demand of the firm that their first priority is to make money for the firm. When combined with the belief that alternative dispute resolution must necessarily limit income for legal practitioners (an idea reinforced in the cost-of-litigation justification for ADR) the effect was to support a view that ADR was confined to restricted circumstances.

There are a number of problems with using simulations as the primary pedagogy for teaching dispute resolution. The variables affecting what is learned are immensely more complex than those associated with traditional classroom instruction and probably beyond the ken of many instructors who are inexperienced in their use.[60] Additionally, simulations sometimes have a way of teaching the opposite of what is intended. For example, students were asked directly, "In what ways have the material and

59. My sense about this concern was that perhaps it was a projection from previous experiences in employment. Given that most first-year students had only worked in settings where employee autonomy is highly constrained, they could not yet imagine professional employment as any different. Perhaps, on the other hand, they are correct.

60. In faculty interviews, the notion of control, and apprehension of loss of control, frequently intruded in discussions of the exercises. I think teachers had two different concerns here. One had to do with the dynamic quality of the exercises. Unlike a case reading assignment, where the material is standardized for the class (everyone reads the same thing), simulations produce a great number of permutations. It is very difficult for a teacher to be assured that the pedagogically "right results" will emerge in any of the play. As the play is generally outside class, teachers are also unable to see the action and guide it along desirable paths, as they are accustomed to directing analytical discussions in regular classes. (Even if exercises were to be held in class there are too many subgroups for the teacher to oversee. Also, exercises usually call for no outside intervention as lessons are to be learned from errors and their implications rather than from immediate corrections.) Secondly, debriefing after an exercise has a high probability of being something of a rowdy class. Every student had a different experience. Many may have been emotionally involved in intense experiences and may seek validation or vindication of their choices. The pairing of students in exercises creates allegiances and competitions to be aired in class. The novelty of discussing role play and non-routine matters may contribute to a "no-school-today" attitude.

For teachers accustomed to tight control over their classes, this pedagogy may cause a disquieting sense that this is pedagogy that can get out of hand; that the risk is high that control might be lost—perhaps not just for a class but over the whole course. There were examples of teachers apparently made so uncomfortable by the experience that they only permitted written reports of exercise results and did not seek any discussion of the exercises in class.

exercises on dispute resolution affected your understanding of lawyering?" First responses were generally of the sort expected, indicating some new recognition of the need for non-litigation settlement as a regular part of law practice. However, follow-up questions produced a discussion about how the exercises had given them new understanding and a respect for adversarial orientations.

The mechanism for this effect was the inclusion of secret knowledge in the ADR exercises. It is typical in simulations of this type to include elements of secret knowledge as part of the role play; that is, to give parties certain significant information asymmetrically. Presumably this is intended to reflect reality and perhaps add some zest and intrigue to the play.[61] However, the consequence of providing players with asymmetrical information is also to provide participants with the opportunity for engaging in bluffing or lying.[62] Many students apparently accepted these options. Later, when those choices were revealed in class debriefings, guileless students—those who had adopted a truthful, cooperative approach (either because that was their nature or how they understood the exercises were to be played) felt abused. Many students apparently took this to be just part of the fun with laughter and "finger-pointing" emphasizing the error. After these revelations, which presumably the instructor had anticipated, he/she took the debriefing to a general discussion of professional ethics regarding lawyers' lying. Most likely he/she then felt the lesson had been well taken and students were now more sensitive to such issues. However, the learning cited by students from these occasions was different and deeply embedded: it was to become distrusting and cynical about fellow students (learning on the interpersonal level that even friends, when impersonating lawyers, could be captured by the adversary ethic) and somewhat suspicious of the lawyer's role that appeared to make such demands on them. For those in this circumstance, their impulse and expressed resolve was to become more distrusting and competitive and not to be made the fool again.[63]

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61. Secret knowledge also expands the variables in play and can provide the bases for a pedagogical test. For example in a negotiation simulation, such hidden facts are likely to be programed to provide the opportunity for leverage at particular points in the process and appropriate use of these facts may indicate the level of skill at which participants were playing. This is not usually meant as a scheme for grading but rather to contrast solutions during the debriefing discussion after play.

62. Typically this option is implicitly or explicitly offered—some might even say, suggested—in the instructions to the participants. It usually takes the form of a caution to players that opponents may not be wholly forthcoming, which establishes that the rules for the game permit disingenuous behavior. Some competitive players then may stretch that opportunity to include prevarication.

63. One student expressed the lesson: "being cooperative is a loser's position." Cooperation only works when the other person is cooperative. If you are cooperative and they are competitive

C. *Role Plays and Recruitment of Teachers to Dispute Resolution Instruction*

Professor Riskin, in the article in this issue, describes the Missouri program has having two essences: the *substantive*, which is "to teach certain information, perspectives, and skills associated with dispute resolution," and the *procedural*, which is "integrating the teaching into standard courses," and to learn by doing—using "simulations heavily."[64] It is my view that what Professor Riskin calls the procedural essence of the program can also be understood as having a strategic role for dissemination of the conception in the curriculum of appropriate legal education and ideal legal practice. While some law teachers may come to accept the values and perspectives of ADR on their own, many must be recruited to it in order to meet the curriculum's objective of dispute resolution instruction in all substantive law courses.

From the beginning of the program, simulation—learning by doing—was the primary pedagogical device intended to unsettle students' incoming images of lawyering and to affect their first-year socialization.[65] But the pedagogy also had an essential role defining the curriculum as a reform for teachers—an out-of-the-ordinary way to teach. Non-litigation role-play simulations distinguish the curriculum as an innovation and substantial departure from the received tradition of instruction in first year courses.

The need for a nontraditional pedagogy to teach dispute resolution is not a difficult idea for traditional faculty to accept. For the most part, until very recently, standard substantive law casebooks had little to no materials on alternative dispute resolution, settlements prior to trial, or on the ordinary practice of law.[66] However, resistance to requests to innovate comes easily. They may be in the form of reluctance to disrupt established

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you will probably lose. As you cannot know for sure what position the opponent may take, it is better to be competitive, because that improves your chances of winning—especially if it turns out that your opponent was cooperative. Of course, this plays into the already competitive atmosphere of the first year. Students understand well the tradition in legal education to front load status rankings that are critical to their professional futures.

64. *See* Leonard L. Riskin, *Disseminating the Missouri Plan to Integrate Dispute Resolution Into Standard Law School Courses*, 50 FLA. L. REV. 589, 597 (1998).

65. *See id.* at 10-11. Videotapes of role-plays were added during the second phase of the Missouri project. They allowed the curriculum to move with greater efficiency—not every aspect required time-consuming, student trial-and-error learning—and, in the case of videos that overlapped class simulations, they standardized the play and analysis of play so that important lessons would be less diffused in the breadth of individual role-play experiences.

66. Recent editions of a few casebooks have incorporated some materials on alternative dispute resolution as it has become more common in legal practice. *See id.* at 28 n.73. However, they are still the exception, not the rule.

syllabi or to use an untried method of teaching, claims of time constraints in an already ambitious timetable, or concerns about losing authority and control of a class with a deviant pedagogy. Sometimes resistance simply invokes exclusion by appealing to division of expert labor —"Well, I'm not expert in that area."—that organizes the larger law school curriculum. The persuasive counter to these forms of resistance is to convince the law teacher to prepare the role play that will be used in her/his course.[67] This accomplishes a number of objectives: it reinforces the expertise of the teacher in her/his own subject (lessening the appearance of "outside" interference in her/his course); gives the teacher a significant intellectual property stake in the curricular effort and a disposition to repeat the instruction again; and, most importantly, opens the possibility of converting the teacher to the "substantive" essence of the program.

Guidance is offered in preparing role-play scripts. They are to be formulated so that "successful" outcomes—those best satisfying the underlying interests of each party—are likely to be settlements, not litigation. In writing the scenario script, the teacher is to: 1) construct party interests, separate from legal entitlements; 2) configure those interests so that they are not best satisfied, or perhaps even injured, by strict application of the legal rules; and 3) open the possibility that through insightful interviewing or careful analysis of the facts, role players come to the understanding that collaborative, or interest-based, agreements may offer the best resolutions. Alternative outcomes, such as impasse or proceeding to litigation, are kept possible to illustrate "bad" outcomes.

For the traditional law teacher, the request to construct a scenario may be presented as not a substantial departure from routine forms of hypothetical creation used in classroom dialogues or examinations. Scenarios with sub-themes, submerged facts and logics, hidden agendas, and dramatic characters are standard components in regular teaching hypotheticals. The primary differences are the length and elaboration of the hypothetical and its purpose.[68] It can be presented as an interesting challenge to expand routinely created hypotheticals from constructed structures for testing or classroom teacher-student dialogues into elaborate (or not) role plays where students act out pedagogic scenarios.

The "conversion" to the "substantive essence" of ADR, if it comes, is

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67. An incentive to sweeten the proposal, for example, a monetary stipend or prospects of publication in teaching materials may assist the process. Of course, the influence of authoritative persuasion—a supportive dean or other senior faculty—can also be significant in moving traditional faculty to participate in the curriculum. However, as observed in the first evaluation of Missouri, less willing faculty may actually undermine the program by directly or indirectly communicating their doubts about the value of an activity to students.

68. Another significant difference is that in role-play simulations everything is revealed, including much of the author's intent, by the conclusion of the exercise.

through the teacher's "selling" herself/himself on the values embedded in the simulation—that is, that the interests of the parties in conflict should be part of a lawyer's analysis and that non-litigation resolutions can be the best outcomes. Such an understanding may be more probable when the teacher is the author of the constructed "reality" of the scenario. Construction and use of role-play simulations has become a marker of success and a strategy for diffusion of the dispute resolution curriculum.

V. DIFFUSION OF THE CURRICULAR INNOVATION

The larger ADR movement, of which the Missouri program is a part, contains a number of heretical elements. Untamed, they make teaching dispute resolution unappealing to traditional law professors. I believe it is through the interplay between what Professor Riskin has labeled the project's *substantive* and *procedural* essences that the heresy is tamed. What follows is my interpretation of how this was played out at Missouri in the early years of the project: how it developed into a strategy for recruitment of traditional faculty members to the curricular reform project, and how it might be applicable in the process of adopting this program elsewhere in legal education. No one at the University of Missouri bears any responsibility for this interpretation and many may well disagree with some or all of it. This is my own understanding as an outsider.

A. *Taming the Heresy*

Heresies emerge within institutions as challenges to prevailing orthodoxies and practices. They are not calls for revolution, but for change. They challenge the status quo, existing power arrangements, traditions of past practice, and other similar items, and attempt to upset the balance in pursuit of a better path to collective goals. They are resisted, but have a better chance of overcoming that resistance if authorities get behind them (e.g., in this case, deans and senior faculty from core areas of the discipline). Greatest resistance occurs when heresies are first introduced in a setting. That resistance may contain, marginalize, or completely suppress the heresy. If widely accepted, though, heresies become the new status quo. Heresies become accepted through implementation of power or conversion of unbelievers. It is the latter process that is interesting here.

The "heresies" in the ADR movement are likely to have their greatest consequence when the dispute resolution curriculum is first introduced in a traditional setting. It is here that the movement's perspectives, values, and expectations about law school teaching must confront traditional faculty culture. To the extent that the "new" ideas are seen and labeled "heretical," they can be more easily dismissed by the traditional faculty or

sidetracked to the marginal curriculum.[69] By "taming the heresy," proponents are more likely to make the dispute resolution curriculum acceptable to the resistant faculty and increase the possibility of their participation. Participation, in turn, greatly increases the prospect for conversion to values, orientations, and goals of the movement. The heresy is "tamed" by expanding, contracting, and compromising those elements of ADR that most challenge traditional law school teachers' culture. The process is complex and has many elements, but let me present a simplified version of it.

B. *Context*

While the complex history of the alternative dispute resolution movement can not be recounted here, in simple terms, the alternative dispute resolution movement first emerged outside the legal profession and evoked little interest in legal education. In fact, early proponents of ADR assumed that "alternative" was not just an avoidance of litigation, but also of lawyers—the instruments of adversarial conflict.[70] Community mediators, trained lay mediators, or retrained social workers or therapists were to be the ADR interveners. Law-trained people were welcome, albeit hesitantly, only if they removed their lawyer hats and accepted the morality of conflict resolution without professional hierarchy and imposed authority. The movement developed skills training and recruitment programs where, through experiential role plays, would-be mediators learned the benefits of cooperative problem-solving and neutral intervention. The training was active, personal, and based on the belief that effective learning had to include self-discovery and impulse control. Role play was seen, and personally experienced, as a powerful educational and socialization device. Learning by role-playing became an orthodoxy of the ADR movement. It was based on a belief that only through personal experience and active training could participants become converted (or more strongly committed) to the perspectives and values of the ADR

69. Marginal curricula include: upper-level specialty courses that are largely in the course list to satisfy the research and teaching interests of particular faculty who carry the primary curriculum load elsewhere (e.g., first-year substantive law courses and business-related advanced courses); courses taught by adjunct and part-time faculty; professional responsibility courses; legal writing courses; and clinics. *See generally* DONALD W. JACKSON & E. GORDON GEE, BREAD AND BUTTER?: ELECTIVES IN AMERICAN LEGAL EDUCATION (1975).

Marginalization also takes the form of examples given earlier where faculty dismissed ADR as appropriate only for trivial legal problems or where clients were unable or unwilling to pay the costs of litigation.

70. *See generally* JEROLD S. AUERBACH, JUSTICE WITHOUT LAW? (1983); NEIGHBORHOOD JUSTICE: ASSESSMENT OF AN EMERGING IDEA (Roman Tomasic & Malcolm Feeley, eds., 1982); SALLY ENGLE MERRY & NEIL MILNER, THE POSSIBILITY OF POPULAR JUSTICE: A CASE STUDY OF COMMUNITY MEDIATION IN THE UNITED STATES (1993).

movement in non-adversarial, cooperative, problem-solving. Role-playing was not only a pedagogy, but also a conversion device.

ADR initially came to law schools through law faculty drawn to mediation and the perspectives and training methods in the outside movement. They saw a relevance in legal education. This interest also allowed some of them to develop, expand, or revitalize law school dispute resolution offerings—e.g., arbitration, mediation, negotiation, and client-interviewing—in specialized upper-level or clinical curricula. (While providing a limited number of students exposure to the subjects, such efforts made no direct challenge to a traditional curriculum or traditional faculty and could easily be assimilated into the diverse array of upper-level offerings). A few grasped the potential in the ADR movement for reforming certain aspects of legal education—specifically the orthodoxy of teaching adversarial orientations, zero-sum conflict resolution, litigation as the primary procedure for legal resolution, and legalistic understandings of client problems. The challenge was to spread this view beyond their own domains, their own courses, to influence the whole curriculum. The Missouri project and the other law schools' dissemination projects described in this issue are examples.

Bringing the tenets and training methods of the external ADR movement to legal education confronted proponents with the need to clarify intentions. Was it their intention that law schools train all students to: (1) become dispute resolution neutrals; or (2) advise clients when to seek alternative dispute resolution; or (3) prepare clients for alternative dispute resolution; or (4), find aspects in alternative dispute resolution approaches and techniques that might be appropriate for ordinary legal practice? The first option, being the most heretical, was not attempted. There could be no challenge to the idea that the purpose of law school is to train all students to be lawyers, not mediators.[71] The second and third options were plausible, but dependent upon developments external to legal education—increasing construction of ADR fora and mandates for alternative dispute resolution in legal and lay arenas. As those fora have become more commonplace for certain forms of conflicts, these perspectives on introductory ADR instruction have supported development of curricula. However, neither option presents a serious challenge to traditional conceptions of adversarial lawyering and both are generally understood as simply the expansion of legal services.[72] The fourth option

71. Of course, in time, mediation has grown into a subfield of legal practice and mediation training is available for some portion of the student body in many law schools. Outside of law school, training of lay mediators, including school children, remains a substantial activity in the ADR movement.

72. The second orientation also supports dismissive treatment of certain conflicts—a way to discard those disputes that, in this "overly-litigious" society, do not justify the costs, nor merit the

has great potential for being perceived as heretical when it is taken as a criticism of orthodox conceptions of proper legal training and purposes of training. This, of course, is the Missouri program.

C. *Dispute Resolution*

My observation of the Missouri program and the ADR movement over the years suggests to me that the potential heresy in perspective four has been tamed in a number of ways. In the initial years, when the idea of teaching ADR as part of substantive law courses was new and most vulnerable to rejection, the concept was redirected by proponents from a primary emphasis on mediation to one on negotiation and settlement prior to trial.[73] This simultaneously removed all ambiguity as to whether the central purpose was to turn out potential mediators—reassuring to traditional law faculty—and, more importantly, expanded the project's reach to nearly all areas of legal practice. The change was signified in adoption of the phrase "dispute resolution" as a substitute for "alternative dispute resolution" to characterize the program and larger movement in legal education.[74] This was an important move. Conceptually, litigation is shifted from the primary reference used to distinguish and define alternative forms of dispute resolution, to simply one category in a multi-categorical array of conceptually equal means to resolve disputes.[75] Comparisons of dispute resolution options, then, can be made among various categories in the array (e.g., mediation vs. arbitration, or negotiated settlement vs. mediation, etc.) rather than being defined in opposition to

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benefits, of litigation (first given authority in Chief Justice Burger's advocacy of ADR). The third orientation is more closely associated with those substantive courses related to subjects where law practice has come to include more possibilities of mediation (e.g. family practice, petty personal plight practice, etc.). This orientation has also given rise to the odd term "mediation advocacy," (used in Tulane report to FIPSE) and the phrase, "training law students to win the mediation," which I heard recently regarding a course in a law school not part of this project. Neither orientation is heretical, in fact, just the opposite.

73. They were greatly aided in this process by the establishment of the Harvard Negotiation Project which lent the movement elite authority and made credible the concept of win-win negotiation. *See generally* ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (1981).

74. Dropping the term, "alternative," also mooted the apparently anti-lawyer, or lawyer-critical, element present in the outside ADR movement. Professor Riskin, speaking of ADR, sometimes substitutes the term "appropriate" for "alternative." Alternative Dispute Resolution is, however, still used as section titles by most professional associations for law professors and lawyers. Presumably, the legal profession is not prepared to cede the phrase to the lay ADR movement.

75. The notion of an array of dispute resolution methods implied many alternatives to litigation besides simply mediation, arbitration, and negotiated settlement. Rather marginal processes, such as rent-a-judge and mini-trials, were also dragged into the concept to expand its breadth.

litigation. It "deprivileged" litigation as the *status quo*. More significantly, the change also gave credibility to ADR in legal education by using traditional lawyer's work as the primary reference for the activity, rather than mediators, therapists, or the other nonlegal actors who were actively building the ADR movement outside of the legal profession. In the example of the Missouri Project, Professor Riskin also invoked a concept of the lawyer as "problem-solver" to describe the "good lawyer" as one who chooses among the options in the dispute resolution continuum for that method that will result in the best resolution for the parties.[76]

The tradeoffs were significant. Proponents of ADR in legal education departed from the mainstream movement outside the legal profession by acknowledging that litigation was an acceptable category for dispute resolution.[77] This was necessary to create space for ADR in the law school curriculum, but perhaps more significantly, it opened grounds for discussion with traditional colleagues about the circumstances when litigation is, or is not, the best option—a generally unexplored area for the latter group. The issue of "best option," in turn, imported a central ADR value: that "best" is defined in terms of disputants' interests, not abstractions of rules, law, or theories of justice and that mutual and noncompeting interests are emphasized over zero-sum outcomes. To accept this view is a large step for traditional colleagues.[78]

D. *Conversion*

The strategy to make curricular space for ADR in legal education is relatively straightforward. Law schools are already fairly accepting of faculty members' teaching interests, but to expand the project beyond the

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76. My interpretation of the use of his concept, "problem-solver," is that it is offered as a way to make the lawyer's image more complex than simply "litigator" through the use of a common term that permits ambiguous meaning. Traditional law teachers cannot be offended by the term. Who can be against problem-solving? Also, on its face, it does not beg for definition. In fact, problem-solving is open to being interpreted as finding the best legal rule, developing effective litigation strategies, engaging in litigation or appeals of adverse decisions, and, of course, rejecting ADR. I am not sure that this would be Riskin's aspiration for the concept. But unless careful attention is paid to the way he intends the term to be used, people apply their own understanding. Students, in my first two evaluations, at all schools, even where ADR was not taught, embraced the term as applying to themselves. The concept is overly-broad but, I believe, strategic in the model of the Missouri Project.

77. Proponents of ADR in legal education are, of course, law professors. Also, it is not clear that they were ever very welcome in the ADR movement outside the legal profession. There, mediators were attempting to get independent recognition as dispute resolvers, not simply to expand the lawyer's role.

78. For those who chose to resist it there is substantial support from casebooks, where client's interests are typically ignored. There are also long traditions of teaching subjects in the same way, and professionally cherished concepts of "rights" and "justice."

proponent's own courses, recruit new participants, and ultimately change the substantive curriculum, a bargain must be made. Without conversion of a significant portion of the faculty to accept, or at least tolerate, the project's "substantive essence," there is little chance that a dispute resolution curriculum can be more than a marginal activity in the law school—accepted by traditional faculty only as long as it is confined to the specialty curriculum and exerts no demands on them or the dominant law school culture.

E. *Interplay of Substantive and Procedural Elements*

In discussing the project's substantive and procedural elements, Professor Riskin implies that the procedural is the instrument of the substantive—a way to put theory into pedagogical practice. However, when thought of as a conversion strategy, the order is reversed—through pedagogic practice one comes to embrace the theory. Conversion has several sequential steps.

First, traditional faculty members (those to be recruited) are asked to think about legal practice, not simply the law, in the areas in which they teach (e.g., in contracts, torts, criminal law, family law, etc.). Proponents (those doing the recruiting) then must get faculty members to admit that negotiated settlements prior to trial are a substantial part of that practice. They are not asked to repudiate litigation, but merely make a "realistic" assessment of what lawyers do as problem-solvers.[79] In fact, they are told that litigation is acceptable, but should be seen as an option dependent upon circumstances (again, an appeal to realism). Next is for the teacher to admit that she/he has some obligation to teach about that aspect of practice, however briefly, to expose students to the "reality" of lawyers' work.[80] Lastly, and of utmost importance, is to accept the proponent's idea that for this teaching to be effective requires nontraditional, experiential methods.

The bargain is that ADR proponents must accept pre-trial negotiations as the vehicle to import the values of non-adversarial dispute resolution

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79. Professor Riskin's concept of lawyer as "problem-solver" describes the lawyer as one who best chooses among resolution alternatives guided by client's interests. *See* RISKIN & WESTBROOK, *supra* note 14, at 52. The concept, of course, is affirmative (few would subscribe to not wanting to be a problem-solver or to be a problem-creator), active (describes a professional using judgment), ambiguous (problem-solver is a term easily adapted to many activities, including developing litigation strategies), and, therefore, readily acceptable. *See supra* notes 75-76.

80. Not every teacher feels this obligation. In 1992, the ABA released a report which was highly critical of law school's efforts at practice education *See generally* SECTION ON LEGAL EDUC. AND ADMISSIONS TO THE BAR, ABA, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap). Since then, denying the obligation has become more difficult.

into the substantive law curriculum. There is no other option.[81] Yet, the essential nature of pre-trial negotiation is bargaining under the threat, and promise, of adversarial resolution. Hence, cooperative and adversarial values compete directly in pedagogic examples. Proponents have confidence that, in most circumstances, cooperative values will prove superior.[82] However, the danger in the bargain is that control over shaping those circumstances (e.g., in teaching hypotheticals, acted-out role-plays, post-simulation discussions, etc.) is ultimately in the hands of faculty outside the movement, some of whom may be unsympathetic.[83]

A commitment to the strategy of recruitment through simulation writing was again apparent in the dissemination project described elsewhere in this issue. Several of the adapting schools marked their success with counting new teaching simulations. Whether the device proves successful for conversion of new faculty members to the ADR movement is, at this time, an unanswered question.

VI. A SUGGESTION FOR ADDITIONAL INNOVATION

The University of Missouri dispute resolution project and its influence and dissemination in legal education has been interesting to observe. I do not know where the dispute resolution teaching movement will go from here. However, I would like to suggest an idea that might help solve the problem discovered in the first survey of students' perception of ADR and move the curriculum project forward. The curriculum project takes pride in presenting law students with a more realistic education in the classroom. I think it truly benefits from that claim. But, still, it is "realistic" only in the sense that it is directed toward ordinary legal practice rather than the extraordinary practice of appellate lawmaking. With few exceptions, the movement's pedagogic materials and teaching approaches are still only products of law teachers' imaginations. While this has been, and may

81. This is not quite correct. Client interviewing and counseling are also part of "imagined practice" and incorporated in the dispute resolution curriculum once established. But, historically, interviewing and counseling has been conceptualized as preparation for litigation, not settlement processes. Hence, it is a less open route than settlement negotiation.

82. Professor Riskin disagrees with this characterization as applied to himself but concedes that others, including students, may have this impression.

83. In the first evaluation, when dispute resolution instruction was first being implemented in the Missouri curriculum, I found many examples of the instruction being undercut by skeptical faculty and of circumstances in which adversarial values were reinforced in cooperative problem-solving exercises. Professor Riskin, while accepting that the instruction might be undermined by unsympathetic faculty, disputes my characterization of the bargain as dangerous. Rather, he sees the bargain as opening a continuing relationship, a foot-in-the-door, for further discussion and negotiation with those faculty about their presentations. I am sure that is true in the Missouri Project. However, I am less certain of that this will be the case in other contexts (e.g. some adapting schools) where proponents may lack his authority and persuasive ability with colleagues.

continue to be, a significant teacher recruitment device, its limitations, in my opinion, impede the growth of the movement.

As discussed earlier, data from the student interviews and questionnaires associated ADR with non-heroic lawyer attributes as traditionally conceived. The mobilization of the positively connoted label, "problem-solver," can perhaps be seen as a way of trying to get around this. Presumably, in the concept, an alternate heroic image to fighting advocates is defined—lawyers who better serve their clients' interests.[84] Proponents explain that ADR is a realistic description of legal practice (most cases are settled, not litigated) and that most lawyers are not heroes. While perhaps true, the difficulty with this approach is that legal education is not a domain of realism or empiricism, but of idealism. The practice of law (as well as most other aspects of the larger social world) is implied in the law school classroom as a maintained myth of almost infinite possibilities. To do otherwise severely restricts the primary occupation of the classroom, which is the exercise of reason and analytical capacities. While law teachers seldom explicitly invoke heroic attributes and images of lawyers, those attributes remain integral to the myths of lawyers as winners—as in winning arguments, winning appeals, winning clients, winning fame, etc. These images are important as motivators, to communicate significant professional values, and to assist the socialization of novices into the lawyer's culture.

The image of ADR practice is obviously not something that can be shaped solely by the program. But I suggest that the repertory of teaching materials be expanded to be even more "realistic" by developing teaching materials, role-plays, and simulations based on actual cases of successful dispute resolution. With these, students could vicariously participate in professional expertise and evaluate truly "real" decisions and their consequences. They may come to redefine heroic winning from success through persuasion of authority to the development of mutually satisfying resolutions of conflict. They could vicariously experience negotiations knowing that their decisions and actions could be weighed against real outcomes, not simply as competitions with classmates or vying for a teacher's favor. They would see the often difficult interactions between lawyers and clients on recognition of client's underlying interests.[85] They

84. Interestingly, Jan Schlichtmann, the lawyer who sacrificed all his assets, his personal relationships, and career for his clients in the toxic tort case and hero in the non-fiction, best-selling book, JONATHAN HARR, A CIVIL ACTION (1995), said, recently: "I just came to appreciate how wasteful and destructive litigation can be." Carey Goldberg, *The Stresses of Distilling Drama from Life*, N.Y. TIMES, Sept. 13, 1998, § 2, at 54. Schlichtmann now focuses on "problem solving," encouraging "less confrontational, more peaceable, more realistic talks between sides in a dispute." *Id.*

85. *See generally* AUSTIN SARAT & WILLIAM L. F. FELSTINER, DIVORCE LAWYERS AND THEIR

would have better access to the working lives of lawyers and, where examples are exemplary, they may come to incorporate alternative dispute resolution into their images of heroic legal practice.

I know there are many barriers to the creation of such teaching materials, but they could be a powerful teaching tool and an even closer link between practice and education. They would not necessarily be dependent upon the imaginations of individual faculty to construct successful scenarios; perhaps the legal profession would be willing participants in the development of such teaching materials. It seems to me that if this were possible, it would be an important step for law student socialization and dispute resolution instruction.

CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS (1995). Role play simulations using hypotheticals usually incorporate client's underlying interests as self-evident once articulated. Sarat and Felstiner's research shows that this a realm of struggle between lawyers and their clients. *See id.*

METHODOLOGICAL APPENDIX

Data for this article are from three separate evaluations of the Missouri Project, each using somewhat different methodologies. The first was a formative evaluation conducted in the Spring of 1986. Formative evaluations attempt to give project directors an early read on how their plans are working out so that, if necessary, adjustments can be made during the implementation. The second study was a complex and lengthy effort to provide a summative evaluation of the project. Summative evaluations are intended to provide assessments of the effects and outcomes of fully implemented projects to determine whether the project's goals were met. In that study, data were collected from the beginning of the 1990 academic year through midwinter of the 1991 academic year. The third evaluation accompanied the dissemination phase of the Project, in which the attempt was made to introduce, and perhaps replicate, the curricular innovation in other settings. While this phase was perhaps the most complex aspect of the entire project, involving the greatest number of actors and contexts, budget restraint made it the least available for external evaluation. As the article begins with data from the second evaluation it is first to be described here.

A. *Cross-Time, Cross-Context Evaluation*

1. Comparison Schools—Curricula

Students at three law schools—University of Missouri-Columbia (Missouri); Indiana University-Bloomington (Bloomington) and Willamette University (Willamette) participated in the study. Bloomington was selected as a "control" setting because of its presumed similarities to Missouri. It also is a Mid-Western state-funded law school located at its university's main campus away from the major urban areas of the state. Data from students at Bloomington were to provide a base for comparison of curricular effects of Missouri's program on its students. Willamette is a private law school located in Salem, Oregon. While geographically distant and, at least by funding sources, different from Missouri, Willamette's curricular effort in dispute resolution provided the possibility of isolating pedagogical effects in the Missouri program. Technically speaking, the study's research design is a combination of a longitudinal test-retest-retest with cross-group comparisons to a proxy control[86] and

86. Obviously, a true control group is not possible. No two law schools provide experimentally identical conditions. Nor is it possible to randomize assignments of participants to different schools. Therefore, the null-category context can only approximate an ideal control group

second experimental condition—a nine-cell, fixed-effects matrix for repeated measures.

Except for the dispute resolution program, the first-year curriculum at Missouri was standard. It included courses on Contracts, Property, Torts, Criminal Law and Procedure, Civil Procedure, and Legal Research and Writing. Each course was a year long in two semester parts. At Bloomington, the first-year curriculum covered the same subjects except Property, Torts, and Criminal Law were each taught as one semester courses and Constitutional Law (a second year course at Missouri) was required in the Spring. Willamette also had the standard first-year curriculum but included the course, "Dispute Resolution Processes," in the Spring.

The first year in legal education is the most intense of the three years in terms of focusing the attention, energy, and time of students.[87] By teaching dispute resolution in this year, the Missouri and Willamette programs intended to have a much greater impact on students than if the instruction were solely confined to the advanced curriculum, as is common elsewhere.[88] However, the intensity of the traditional curriculum also presents a problem. As an innovation in that curriculum, dispute resolution needs to be presented in such a way as to encourage students to take it seriously—as an integral part of the curriculum and not as a distraction from primary educational tasks. Missouri and Willamette approached this problem differently.

2. The Survey

Three questionnaires were developed. The first, to provide baseline data, was distributed prior to the beginning of law school. The second, to provide effect data, was distributed at the end of the first year after completion of the Missouri program and Willamette course. And, the third to provide retention data, was distributed at the end of the respondent's third semester.

In Fall 1990, during first-year orientation, all members of the entering classes in the three law schools were asked to volunteer for the study.[89] As

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in a laboratory experiment. Still, the heuristic value of the comparison outweighs its limitations.

87. *See* ABA, LAW SCHOOLS AND PROFESSIONAL EDUCATION: REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION OF THE AMERICAN BAR ASSOCIATION 38-40 (1980).

88. A national survey of law schools in 1989 indicated that 94% offered at least one course in dispute resolution. Nearly all of these courses were in the upper level curriculum. *See id.* The survey reported in note 10 shows the development has continued.

89. Orientation sessions are scheduled on the day preceding the first day of class. I distributed the survey at Missouri and Bloomington, but because of overlapping dates, the survey was distributed at Willamette by a member of their staff.

part of the presentation of the study, students were provided with an informed consent form[90] and the following statement:

A Study of Legal Education

The first year of legal education is considered one of the most significant stages in the development of conceptions of lawyering for recruits to the profession. This study, sponsored by the Fund for the Improvement of Post-Secondary Education of the U.S. Department of Education, is intended to better understand this important educational process. The results will be provided to legal educators and others interested in legal education to assist them in evaluating the impact of law school curricula and some proposals for change. Your voluntary participation is very important for the success of this study and the goals for which it is intended. The study will be conducted by Professor Ronald Pipkin of the University of Massachusetts, Amherst.

You are asked to complete the attached questionnaire and, later, two follow-up questionnaires—one in the last few weeks of the second semester and one next Fall during your second year in law school. Each questionnaire should take only about 20 minutes of your time. *The questionnaires are equally important to the study and therefore you are urged to complete each one when asked . . . .*

The informed consent form accompanying this questionnaire explains the procedures of the study and your involvement in it. Your signature is required before participating in the study. Please note, your responses are *strictly confidential.* Nothing will be provided to the law school or any other agency, or be published that will identify your individual responses.

The first questionnaire, which follows, is divided into four sections: legal education; legal practice; legal careers; and background information. For nearly all of the questions, you are asked to check off or circle responses that best describe your views or information about you. No questionnaire can perfectly anticipate the answer you would give if asked in another format. Please answer each question using the categories presented. If you wish to explain your answers further, write in the margins or on the back of the questionnaire.

We hope that you find your involvement in this research project interesting and that it gives you an opportunity to

90. The consent form was approved by waiver by the Human Subjects Review Committee of the University of Missouri-Columbia.

think about your legal education and what it should be. Thank You!

The second and third questionnaires were distributed as follows: each respondent's questionnaire was coded with a study identification number and enclosed in a large envelope with the individual's name on it; they were mailed in bulk to a designated member of the secretarial staff at each school; that person distributed the envelopes to each respondent's school mailbox. After completing the questionnaire, respondents returned the survey to the secretary, who checked off their identification number on a master log. On a specified date, the secretary matched the numbers with a list of respondent's names and issued a follow-up letter to late responders urging continued participation in the study. After the close of the semester the questionnaires were returned in bulk to my office where they were then coded and entered in the computer. Data were analyzed using SPSS-X. Response Ns and rates are provided in table A-1.

Table A-1: Response Rates

	Missouri	Willamette	Bloomington	Total
Fall Orientation	(146)	(158)	(197)	(501)
Spring, First Year	60.3 (88)	72.2(114)	66.0(130)	66.3(332)
Fall, Second Year	49.3(72)	58.9(93)	52.2(103)	53.5(268)

Full participation in the study involved completing three repetitive questionnaires without compensation or other specific incentive. Given that, and a first year drop out rate of 3%, the three-survey response rate of 53.5% is satisfactory and provides large enough cell sizes for statistical analysis of most variables.

In addition to student questionnaire, some participating and upper-curriculum faculty at Missouri were interviewed, as was the faculty member responsible for creation of the Willamette dispute resolution course. Interviews were intended primarily to provide me with a better understanding of the program and to elaborate on descriptions of how dispute resolution exercises were handled in individual courses. They also provided impressionistic data on faculty estimates of the contribution of the program to first-year courses and the law school curricula, generally.

3. Comparability of Study Sites—Student Attributes

The objective of the evaluation was to determine whether there were meaningful school differences in the assessment measures, and, if present, whether they should have been credited to effects of varying curricula at the three law schools. As a first step, then, it was necessary to determine

whether the responding groups, i.e., law schools, were of similar or substantially different compositions. If different, were those group differences such that they might generate spurious findings attributed to variance in instruction, rather than to variance in student composition.

Information on personal characteristics was solicited in the baseline survey. Tables A-2 through A-5 (appendix) summarize the results. Table A-2 includes personal characteristics—age, sex, marital status, and size of the city of origin. Table A-3 reports academic backgrounds—type of undergraduate college attended, college GPA, and LSAT scores. Table A-4 includes background family status measures—mother's and father's education and occupation, and family income. Table A-5 reports measures on family and personal political and religious beliefs. Statistical tests were conducted using analysis of variance (ANOVA) or cross-classification (χ^2), depending on variable type, and the results are stated in the last column of each table. Groups Ns are listed in table A-2.[91]

Table A-2: Background Characteristics by School: Age, Sex, Marital Status, and City of Origin: Size

Variables	Missouri	Willamette	Bloomington	ALL	(prob)
Age (avg)	24.9	25.4	24.4	24.9	ns
Sex (% male)	69.2	69.6	64.0	67.3	ns
Marital Status					<.01
Never Married	73.8	67.9	84.3	76.1	
Married	19.3	28.8	13.2	19.9	
Divorced/Separated	6.9	3.3	2.5	4.0	
City of Origin: Size					ns
Big City	13.1	12.7	8.6	11.2	
Suburban	35.9	39.2	32.0	35.4	
Small City	18.6	22.2	27.4	23.2	
Small Town	19.3	19.6	23.4	21.0	
Rural	13.1	6.3	8.6	9.2	
(N)	(146)	(158)	(197)	(501)	

With minor exceptions, students at the three law schools were quite

91. A few respondents failed to answer a few questions, specifically those asking for academic scores and parental income. However, as missing responses did not exceed ten respondents for any one item listing and listing redundant Ns is unnecessary, the maximum Ns are reported in the table.

similar. Table A-2 shows that in each setting, the average age was 24-25; two of three students were male; and most were from small cities, towns, or suburbs. However, to a statistically significant degree, students at Bloomington (84%) were less likely to be have been married (compared to 74% at Missouri and 68% at Willamette). And among students who have been married, at Missouri one in four was now divorced, as compared to one in seven at Willamette and one in ten at Bloomington.

Data in table A-3, on academic backgrounds and law school qualifications, reflect certain small status differences between the schools. At each law school, about 3 of every 5 students had attended a public college or university as undergraduates, with Missouri having the largest percentage (69%) and the private law school Willamette is smallest (61%). The law schools differed more significantly in the portion of students from private colleges who had attended elite private colleges—about one half at Bloomington in comparison to about one quarter of those at Missouri and Willamette.

Table A-3: Background Characteristics by School: College, College GPA, and LSAT

Variables	Missouri	Willamette	Bloomington	ALL	(prob)
College Attended					<.05
Elite-private	6.9	9.6	16.2	11.4	
Public	69.4	61.2	63.0	64.2	
Private-non-elite	21.6	26.7	19.8	22.6	
Other	2.1	2.5	1.0	1.8	
College GPA(Avg)	3.30	3.14	3.34	3.27	<.001
LSAT (Avg)	37.3	36.2	38.7	37.5	<.001

As to self-reported undergraduate GPA and LSAT scores (48 point scale), the differences among the three schools were statistically significant but relatively minor with regard to means. Ranked by these measures, Bloomington was higher than Missouri, which, in turn, was higher than Willamette.

Table A-4 shows that there were no statistically significant differences among students at the three schools with regard to parental occupations[92] or family income. About one half of the students at each school were from families with moderate to lower incomes (i.e., <80K). About two thirds of

92. The questionnaire permitted nine categories of occupation. Statistical tests were run on the full array of responses. No statistically significant differences were found. The categories were collapsed in the table for parsimonious presentation.

students came from homes with working mothers, with 4 of 5 of those in nonprofessional occupations. Around one third of all students had fathers in professional occupations. Levels of parental education among students at the three schools did differ to a statistically significant degree. Parents of students at Missouri tended to be somewhat less educated than parents of students at Willamette and Bloomington.

Table A-4: Background Characteristics by School: Parent's Education, Occupation, and Income

Variables	Missouri	Willamette	Bloomington	ALL	(prob)
Mother's Education					<.05
H.S./Voc.	36.2	24.1	38.0	33.2	
College	42.5	48.7	33.0	40.8	
Grad/Prof.	21.1	27.2	29.0	26.2	
Father's Education					<.05
H.S./Voc.	33.1*	15.9	28.4	25.8	
College	28.3	35.4	27.4	22.4	
Grad/Prof.	38.6	48.7	44.2	44.0	
Mother's Occupation					ns
Professional	13.1	17.7	14.2	15.0	
Homemaker	31.0	34.8	35.0	33.8	
Other	55.9	47.5	50.8	51.2	
Father's Occupation					ns
Professional	30.6	38.6	36.5	35.5	
Other	69.4	61.4	63.5	64.5	
Family Income					ns
<40,000	27.4	16.1	24.5	22.7	
40-80,000	36.6	36.1	37.7	36.9	
80-150,000	24.0	28.4	23.5	25.2	
>150,000	12.0	19.4	14.3	15.2	
(N)	(142)	(155)	(196)	(493)	

Lastly, table A-5 reports the political orientations of parents and self. No statistical differences were found between student's mothers and self. Around one third of the students at all schools professed political independence for themselves. Among the others, Republicans outnumbered Democrats by a modest amount. Mothers were about equally

classified as Republicans and Democrats, except at Willamette, where somewhat more were counted as Republicans. Statistical significance was found for father's political affiliations. While Republicans outnumbered Democrats in all three schools, the proportion was greatest at Willamette (36.8%) and least at Bloomington (3.6%).

Table A-5:Background Characteristics by School: Politics and Religion

Variables	Missouri	Willamette	Bloomington	ALL	(prob)
Mother's Political					ns
Republican	39.9	48.7	43.1	44.0	
Democrat	40.6	32.1	39.1	37.3	
Indep./Other/None	19.5	19.2	17.8	18.7	
Father's Political Affiliation					<.01
Republican	52.1	58.7	44.7	51.2	
Democrat	32.4	21.9	41.1	32.6	
Indep./Other/None	15.5	19.4	14.2	16.2	
Student's Political					ns
Republican	36.6	41.7	35.0	37.6	
Democrat	27.5	26.3	28.9	27.7	
Indep./Other/None	36.0	32.0	36.1	34.7	
Religious Origin					<.01
Protestant	49.7	40.4	42.1	43.8	
Catholic	31.7	26.3	36.0	31.7	
Jewish	4.1	3.2	7.1	5.0	
Other/None	14.5	30.1	14.7	19.4	
Importance of Religion					<.05
Very	22.8	21.2	24.9	23.1	
Somewhat	40.7	30.1	36.5	35.7	
Not very	24.1	19.9	21.8	21.9	
Not at all	12.4	28.8	16.8	19.3	
(N)	(145)	(156)	(197)	(498)	

Religious background and importance also differed to a statistically significant degree among the three student populations. Forty to fifty percent of students at the three schools were from Protestant backgrounds. Only 3 to 7% were Jewish and 26 to 36% were from Catholic backgrounds.

The primary source of statistical significance, however, came from the large portion of students at Willamette (30 %) who classified themselves as none or other.[93] Regarding importance of religion to self, about 1 out 5 students at each school reported that religion was very important. Statistical significance came from the somewhat lower level of religious importance to students at Willamette—almost one half of all students there reported that religion was not very or not at all important to them, as compared to 36% at Missouri and 38% at Bloomington.

To summarize these findings: few significant differences existed in the distribution of student characteristics in these three study populations. Most of those are consequences of the slight status distinctions among the three schools and their geographical locations, or slightly different ratios of primary to residual categories of variables. Therefore, we concluded that these few differences between the student populations were unlikely to be significant to the study objectives. However, to test this conclusion, statistical tests were conducted (not shown) between individual-level personal attribute variables and assessment measures holding context constant; no statistically significant relationships were found. Consequently, we are confident that differences in assessment measures, where present, can be attributed to variance in curriculum and instruction.

B. *First and Third Evaluations*

I was invited to do the first evaluation late in the project's first operative year. Prior to this time, I was unaware of the project. Professor Riskin, in seeking advice from FIPSE on what sort of individual would be best suited to evaluate the project, was advised to seek someone with knowledge and interest in the area, as opposed to a person with social scientific skills but little interest. Professor Riskin knew of my earlier work on legal education for the American Bar Foundation and of my continuing interest in law student socialization and professionalization.

I was provided with a draft copy of the casebook and supplementary teaching materials used in each course. I visited the law school on April 17-18, 1986, where I interviewed four first-year teachers, eleven first-year students in two groups (five from section 1 and six from section 2), and spoke with Professor Riskin at some length. In group interviews, my approach was to ask open-ended questions and then listen to the individuals interact with each other in an attempt to arrive at some group consensus on the answers. I was particularly interested in probing students' conceptions about alternative dispute resolution and lawyering, how they defined what they had learned and done in the ADR exercises, and their

93. About half of this group were Mormon students who classified themselves as other religion.

understandings of what faculty were communicating to them—directly and indirectly—about dispute resolution. Separate from individuals' attitudes, the interviews also provided me with information on the conduct of the ADR exercises themselves. While the respondents may not have been entirely reliable reporters of those events—there were some factual disagreements and failures of memory—on the whole the information helped clarify my understanding of how the exercises were run.

Prior to coming to the law school I had prepared a brief questionnaire to collect some quantitative data from students on their impressions of the dispute resolution instruction and on orientations toward law school and legal practice, which might be related to their instruction. Quantitative data gathering by questionnaire does not permit respondents the possibility of interaction and consensus building, available in group interviews, nor does it allow one to answer questions in depth. However, the method is superior to the interview for understanding how the larger community feels about a limited number of questions and for identifying possible causal relationships between attitudes and attributes. The latter purpose was my primary interest here. I wanted to determine whether students' receptiveness to the ADR curriculum and perspective might be affected by other variables. The questionnaire was administered at the end of two classes, one from each of the two first-year sections. Students were asked to remain after the class to complete the questionnaire. Most volunteered to do so.

As for the third evaluation, because of the complexity of the project—simultaneous adoption of aspects of the Missouri program in six other law schools—and little budget, my participation as an evaluator was limited to attending the two annual meetings of project directors held at Missouri in the dead of winter, speaking with the directors at these events, and reading their written reports. Unable to pursue school-by-school surveys or on-campus interviews of students, I used the occasion of the evaluation to analyze and reflect on the strategies of diffusion. In particular, I was interested in how the project gains participation of law teachers and attempts to convert them to the perspectives and approach. My report was largely that analysis, which is also included in this article.